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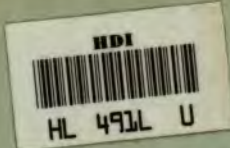
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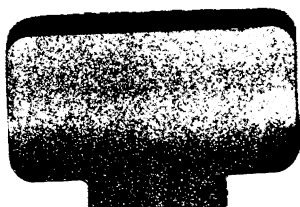
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Banking Laws

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BANKING LAWS

OF THE

STATE OF MISSOURI

REVISION 1919



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CORPORATION LAWS OF MISSOURI

CONSTITUTION OF 1875

ARTICLE X.

Sec. 21. Corporations—fees to be paid when incorporated.—No corporation, company or association, other than those formed for benevolent, religious, scientific or educational purposes, shall be created or organized under the laws of this state, unless the persons named as corporators shall, at or before the filing of the articles of association or incorporation, pay into the state treasury fifty dollars for the first fifty thousand dollars or less of capital stock, and a further sum of five dollars for every additional ten thousand dollars of its capital stock. And no such corporation, company or association shall increase its capital stock without first paying into the treasury five dollars for every ten thousand dollars of increase: *Provided*, that nothing contained in this section shall be construed to prohibit the general assembly from levying a further tax on the franchises of such corporation.

[New section.]

ARTICLE XII.

Sec. 6. Shareholders, number of votes in election of directors.—In all elections for directors or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares held by him or her in said company, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such directors or managers shall not be elected in any other manner.

[New section.] (See Sec. 9732, R. S. 1919.)

Sec. 7. Corporation—business limited by charter—power to hold real estate.—No corporation shall engage in business other than that expressly authorized in its charter or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate for any period longer than six years, except

such as may be necessary and proper for carrying on its legitimate business.

[New section.]

Sec. 9. Stockholders, extent of liability.—Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him or her.

[Const. 1865, Art 7, Sec. 6. Stockholder liable for double amount of his stock.]

BANKS.

Sec. 25. State banks and state owning stock in corporations forbidden.—No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation, or joint stock company, or association for banking purposes, now created or hereafter to be created.

[See Const. 1865, Art. 8, Secs. 1 and 2.]

Sec. 26. Act creating banks to be submitted to the people.—No act of the general assembly authorizing or creating corporations or associations with banking powers (except banks of deposit or discount), nor amendments thereto, shall go into effect, or in any manner be enforced, unless the same shall be submitted to a vote of the qualified voters of the state, at the general election next succeeding the passage of the same, and be approved by a majority of the votes cast at such election.

[See Const. 1865, Art. 8, Secs. 1 and 2.]

Sec. 27. Banks, insolvent, not to receive deposits.—It shall be a crime, the nature and punishment of which shall be prescribed by law, for any president, director, manager, cashier or other officer of any banking institution, to assent to the reception of deposits, or the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent, or in failing circumstances; and any such officer, agent or manager shall be individually responsible for such deposits so received, and all such debts so created with his assent.

[New section.]

General Corporation Laws Affecting Banks.

Chapter 90, Article I, Revised Statutes, 1919.

ORGANIZATION, GENERAL POWERS, DUTIES AND LIABILITIES.

Sec.	Sec.
9722. Corporation, term defined.	9745. Officer in charge of books liable, when.
9723. First meeting, how called.	9746. Annual meeting, when held.
9724. Justice of the peace may call meeting, when.	9747. By-laws for certain purposes, who may make.
9725. <i>Id.</i> Who may preside.	9748. By-law not valid, when.
9726. Meeting of shareholders, how convened—inspectors of election appointed, when—duties of president—two shareholders may act, when—right to vote, how determined—meeting to convene, at what hour.	9749. Powers of corporations defined.
9727. Inspectors to take and subscribe oaths.	9752. Majority of board shall constitute quorum, when—powers.
9728. Qualification of voters, how tested—shall not vote when.	9755. Dissolution of corporation—who shall be trustees—powers and duties of.
9729. Prohibited from voting on hypothecated shares.	9756. Voluntary dissolution of corporation, when permitted—judgment of dissolution, when entered.
9730. If election not held on day appointed, to be held, when.	9757. Application for dissolution, how made—petition shall contain, what.
9731. Failure to elect directors, effect of.	9758. Interested persons, appearance and summons of—general notice to be published—continuance.
9732. Election of directors, etc.—votes how cast.	9759. Judgment of dissolution entered, where—certain property not to be diverted.
9733. Directors to appoint officers—certain officers to keep office, where.	9760. Copy of judgment of dissolution to be sent to secretary of state.
9735. In creating an organization, what necessary.	9761. Directors personally liable, when.
9736. Amendments to Articles. Tax on increase.	9762. Officers and directors personally liable, when.
9743. Stock deemed personalty, how transferred.	9773. Records of corporation evidence, when.
9744. Books to be kept by corporation, shall contain what—shall be open to inspection, when.	9781. Name of expiring corporation may be adopted by its successor.

Sec. 9722. Corporation, term defined.—The term “corporation,” as used in this chapter, shall be construed to include all joint stock companies or associations having any powers or privileges not possessed by individuals or partnerships. (R. S. 1909, § 2963.)

Cited in *State ex rel. v. Rys.*, 196 Mo 523, 94 S. W. 249, and in *Wiehtriechter v. Miller*, 208 S. W. 39. See Const., Art. 12, and *Julian v. K. C. Star Co.*, 209 Mo. 35: 107 S. W. 496.

Joint stock companies or associations having any powers and privileges not possessed by individuals or partnerships are corporations. *Williams v. U. S. Express Co.*, 195 A. 362, 191 S. W. 1087.

“Associations of individuals,” generally synonymous with corporation. 118 Mo. 388. See Const., Art. 12, section 11. A “joint stock company,” since under the statutes, possesses features in common with corporations, will be held to be a corporation—even though the foreign statutes or act of parliament under which it exists declare that it shall not be deemed a corporation. 10 Wall. 410. Cited with approval, 196 Mo. 523. Corporations are not “citizens” within the meaning of clause 1, section 2, Art. 4 of the U. S. Constitution. They are creatures of local law and have not even an absolute right of recognition in other states, depending

upon the assent of those states, which may be given upon such terms as they please. 125 U. S. 181; 8 Wall. 168; 94 U. S. 585; 10 Wall. 410.

One contracting with an organization in its corporate name is estopped from denying its corporate existence. 161 Mo. 597.

Sec. 9723. First meeting, how called.—The first meeting of all corporations shall, unless otherwise provided for in their acts of incorporation, be called by a notice, signed by some one or more of the persons named as corporators in the act of incorporation, and setting forth the time, place and purposes of the meeting, and such notice shall, seven days at least before the meeting, be delivered to each member, or published in some newspaper in the county where the corporation may be established, or if there be no such newspaper, then in the nearest newspaper. (R. S. 1909, § 2964.)

All proceedings of persons professing to act as corporators, assembled beyond the limits of the state, are void. 41 Mo. 525. But when organized, directors may hold their meetings and transact business outside of state, unless otherwise prohibited by charter or by-laws.

While meetings of the stockholders should take place at the home office, yet where there is no prohibitory statute, and all the stockholders give their consent, the acts of the stockholders held in a foreign jurisdiction are valid. 114 Mo. 218, 155 Mo. 95.

Sec. 9724. Justice of the peace may call meeting, when.—Whenever, for want of sufficient by-laws for the purpose, or of officers duly authorized or from neglect or refusal of such officers, or from other legal impediments, a legal meeting of any corporation cannot otherwise be called, any justice of the peace in the county where it is desirable to hold such meeting, or where such corporation is established, if it be local, may, on a written application of two or more members thereof, issue a warrant to either of said members, directing him to call a meeting of such corporation, by giving such notice as is required in the preceding section. (R. S. 1909, § 2965.)

Sec. 9725. *Id.* Who may preside.—Whenever any meeting of any corporation shall be called by warrant from a justice of the peace, the person to whom such warrant is directed may call the meeting to order and preside therein until a presiding officer is chosen and qualified, if there be no officer present whose duty it may be to preside. (R. S. 1909, § 2966.)

**Sec. 9726. Meeting of shareholders, how convened—in-
inspectors of election appointed, when—duties of president—
two shareholders may act, when—right to vote, how determined
—meeting to convene, at what hour.**—Every meeting, for whatever object, of the shareholders in any corporation shall be convened by its president and secretary by a notice published for ten days previous to such meeting, where a longer notice is not otherwise by law or its own by-laws required, in a daily or weekly newspaper, published in the place or county in which the corporation is lo-

cated, or by notice served personally on each shareholder, in writing, setting forth the place and hour and the object of such meeting. If the object of such meeting be to elect directors or to take a vote of the shareholders in such corporation on any proposition in the notice aforesaid, the president, when not otherwise provided by law, shall appoint not less than two shareholders, who are not directors, inspectors to receive and canvass the votes given at such meeting and certify the result to him. At the next meeting of the board of directors, which shall be held within two weeks thereafter, the president shall lay before them the returns so certified, and thereupon such proceedings shall be had as the subject-matter decided by the election, or the vote, may require; and if for directors, the persons who received a majority of the votes cast shall be notified thereof. If the president and secretary fail to call any meeting of the shareholders in any corporation required by law or by the by-laws of such corporation to be held, any two shareholders may call such meeting and appoint inspectors in manner hereinabove provided, notwithstanding such meeting should be held at a later day than had such failure not happened. In all cases where the right to vote upon any share or shares of the stock in any incorporated company shall be questioned, it shall be the duty of the inspectors to require the transfer books of such corporation as evidence of stock held in such corporation, and all shares that may appear standing thereon in the name of any person or persons shall be voted upon by such person or persons, directly by themselves or by proxy. Persons holding stock as executors, administrators, guardians or trustees, or who have pledged their stock, shall be entitled to vote upon such stock. Every meeting of shareholders in any corporation shall be convened at 9 o'clock a. m., and continued during at least three hours, unless the object for which it was so called be accomplished sooner: *Provided*, that if the object of such meeting be for any other purpose than to hold an election or to take a vote on any proposition, it shall be regulated by the by-laws of the corporation as to the manner of convening it, the time at which it shall be held, and the manner of conducting it; any corporation in which there are but ten or a less number of resident stockholders may regulate by by-law the manner of appointing inspectors, their number, and their qualifications. (R. S. 1909, § 2967.)

Where all the shareholders give their consent, the acts of the stockholders at a meeting held in a foreign jurisdiction are valid. *Missouri Lead Co. v. Reinhard*, 114 Mo. 218; 21 S. W. 488. Where, at an election of directors, one who was elected was not recognized, the court should have ousted an intruder and seated the one elected, and should not have ordered a new election. *Tomlin v. Bank*, 52 A. 430. Voting power may be limited by articles of incorporation to holders of common stock. *State ex rel. v. Swanger*, 190 Mo. 561; 89 S. W. 872. In the absence of notice to the contrary, the court will assume that the notice of a meeting of stockholders

was given as required. *Johnson v. Rys. Co.*, 227 Mo. 423, 127 S. W. 63. It is the duty of a corporation to keep a record of the minutes of the meetings of its stockholders, showing the date of the meeting, when and where held, and who was present. *Howard v. Strobe*, 242 Mo. 210, 146 S. W. 792. Where all stockholders are present in person or by proxy, none can afterwards take advantage of any irregularity in the notice of the meeting. *In re Mathiason Mfg. Co.*, 122 A. 437, 108 Mo. 606.

In order to canvass the vote the inspectors must know how each shareholder voted. 64 A. 225. Canvassers of votes cast at an election of directors may be compelled by mandamus to perform their duty. *Id.* Stockholders may challenge a vote while meeting is in progress. *Id.* Also 37 A. 155; 51 A. 437; 99 Mo. 408; 108 Mo. 606.

Notice of meeting, being for the benefit of the stockholders, may be waived by the unanimous consent of such stockholders. 160 Mo. 141; 178 Mo. 189. Notice will be presumed where record shows quorum present. 68 Mo. 601.

Sec. 9727. Inspectors to take and subscribe oaths.—An inspector, before he shall enter on the duties of his office, shall take and subscribe the following oath before any officer authorized by law to administer oaths: "I do solemnly swear that I will execute the duties of an inspector of the election now to be held with strict impartiality, and according to the best of my ability." (R. S. 1909, § 2968.)

Sec. 9728. Qualification of voters, how tested—shall not vote, when.—At every election of directors, the transfer books of the corporation shall be produced to test the qualifications of the voters, and no person shall be admitted to vote, directly or by proxy, except those in whose names the shares of the stock of the corporation shall stand on such books, and shall have stood for at least thirty days previous to the election. (R. S. 1909, § 2969.)

A transfer of stock, not made upon the books of the corporation, passes the legal title and such transfer is good against an execution creditor. 108 Mo. 585; 6 Mo. App. 454; 74 Mo. 77; 103 U. S. 840; 20 Mo. 382; 48 Mo. 136; 52 Mo. 379.

Sec. 9729. Prohibited from voting on hypothecated shares.—No person shall be admitted to vote on any shares of stock belonging or hypothecated to the corporation in which the election is held. (R. S. 1909, § 2970.)

Sec. 9730. If election not held on day appointed, to be held when.—If any election for directors in any such corporation shall not be held on the day appointed, it shall be the duty of the directors to notify and cause such election to be held within sixty days after the day so appointed; and on the day so notified, no person shall be admitted to vote except those who would have been entitled had the election taken place on the day when it ought to have been held. (R. S. 1909, § 2971.)

Cited in *State ex rel. v. Adsit*, 195 A. 572, 193 S. W. 850.

Sec. 9731. Failure to elect directors, effect of.—A failure to elect directors on the day designated by law shall not have the effect of dissolving such incorporated company. (R. S. 1909, § 2972.)

Failure to elect, old officers hold over until their successors are elected and qualified. 180 Mo. 153.

Neither the loss of all the corporate property, nor a failure to hold regular meetings or to elect corporate officers, nor all combined, necessarily amount to a forfeiture of the franchise of a corporation. 50 A. 648. *De facto* directors. 2 A. 1. Presumption in favor of acts of. 44 Mo. 154; 75 Mo. 408.

Sec. 9732. Election of directors, etc.—votes, how cast.—all elections for directors or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares of stock so held by him or her in said company, multiplied by the number of directors or managers to be elected at such election, and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute them among two or more candidates; and such directors or managers shall not be elected in any other manner. (R. S. 1909, § 2973.)

Articles of incorporation may provide that the voting power shall be vested exclusively in holders of common stock, and that the holders of preferred stock, shall have no voting power where this is agreed upon by both the common and preferred stockholders. *State ex rel. v. Swanger*, 190 Mo. 561, 89 S. W. 872; *Tomlin v. Bank*, 52 A. 430.

The right of stockholders to vote in the election of directors on the cumulative plan cannot be taken away by resolution or by-law of the majority of shareholders, and will not be affected by mere silent acquiescence in the act of others. *Tomlin v. Bank*, 52 A. 430. See Const., Art. 12, Sec. 6.

Stockholders, while holding an election of directors, may change their votes, though the result of the election is thereby altered. But they may not make any number of changes and thereby embarrass the meeting. *State ex rel. v. McGinn*, 52 A. 225.

In the absence of any statute, charter provision or by-law, on all questions in regard to the management of the corporation, or its business policies, a share should be the voting unit, and, in respect to the election of directors, such is the declared policy of this state. In *re Mathiason Mfg. Co.*, 122 A. 437, 99 S. W. 502. Where ballot is cast naming certain candidates for directors, but failing to give the number of votes cast for each or the number of shares for which the votes were cast, the same should be rejected and ignorance and inexperience of the proxy casting the ballot is no ground for relief. In *re Mathiason Mfg. Co.*, 122 A. 437, 99 S. W. 502. Where all stockholders are present in person or by proxy, none can afterwards take advantage of any irregularity in the notice of the meeting. In *re Mathiason Mfg. Co.*, 122 A. 437, 99 S. W. 502. Any manner of voting which shows the voter's voice and preserves secrecy is "voting by ballot." *Bradley v. Cox*, 271 Mo. 438, 97 S. W. 88.

Sec. 9733. Directors to appoint officers—certain officers to keep office, where.—The directors shall appoint one of their number president; they may also appoint a treasurer and secretary, and such other officers and agents as shall be prescribed by the by-laws of the company: *Provided*, that the president, treasurer and secretary, or such other officer or officers as perform their duties, of all corporations other than railroad companies, shall have and keep their offices at the general office of the company in this state. (R. S. 1909, § 2974.)

Generally an officer of a corporation is not entitled to pay for services rendered to the corporation, in the absence of any agreement made with the board of directors to compensate him. *Wiano Land & Imp. Co. v. Webster*, 75 A. 457.

President may without special authority from board perform all acts of ordi-

nary nature, which by usage or necessity are incident to his office. 104 Mo. 531. And when so permitted, such authority may be inferred. 49 A. 280. Power to remove a corporate officer for reasonable and just cause is one of the common-law incidents of all corporations. 119 Mo. 383. If agents, acting within the scope of their authority, act in a willful and malicious manner, and damage thereby ensue the corporation is responsible. 55 Mo. 201, 3 A. 589. In absence of anything to the contrary in charter or by-laws a majority of directory will constitute a quorum and a majority of that quorum can do business of the board. 39 A. 453. Officers must act within the scope of authority to bind the corporation. 38 Mo. 228. But his authority may be implied from the manner in which he has been permitted to transact its business. 104 Mo. 531. Also 39 A. 460; 95 Mo. 467; 139 Mo. 149 Mo. 104, 181; 138 Mo. 576; 70 A. 364; 73 A. 135, 389; 74 A. 579; 75 A. 358; 139 Mo. 627; 75 A. 455; 77 A. 422; 78 A. 463; 79 A. 352; 145 Mo. 418; 51 A. 67; 72 A. 147; 84 A. 399; 89 A. 227. Directors are the business managers. 44 A. 172. Directors cannot act by proxy. 90 A. 603. Limit of authority of officers depends on the nature of the business of the corporation. 88 A. 62. Acts must be within the bounds of right and reason. 87 A. 590. Powers of agent may be inferred from continuous acts. 93 A. 185; 94 A. 94. Unauthorized acts of agent, when presumed ratified. 84 A. 268. Need not be ratified by board of directors. 87 A. 590. Liability of directors for negligence. 155 Mo. 514. Officer is entitled to compensation if special provision is made for it. 107 A. 457. But cannot recover if he fails to perform duty. 105 A. 98.

Sec. 9735. In creation and organization, what necessary—
increase of capital stock—fees to be paid.—No corporation, company or association other than those formed for benevolent, religious, scientific, fraternal-beneficial or educational purposes, shall be created or organized under the laws of this state, unless the persons named as incorporators shall, at or before the filing of the articles of association or incorporation, pay into the state treasury fifty dollars for the first fifty thousand dollars or less of the capital stock of such corporation or association, and a further sum of five dollars for every additional ten thousand dollars of its capital stock; and no increase of the capital stock of any such corporation, company or association shall be valid or effectual until such corporation, company or association shall have paid into the state treasury five dollars for every ten thousand dollars or less of such increase in the capital stock of said corporation or association; and it shall be the duty of said corporation or association to file a duplicate receipt of the state treasurer for the payments herein required to be made, with the secretary of state, as is provided by this article for the filing of articles of incorporation or association. (R. S. 1909, § 2976.)

The legislature cannot make a building corporation a benevolent corporation by a declaration to that effect, and cannot exempt it from paying the incorporation tax required by Art. 10, Sec. 21 of the Constitution. *State ex rel. v. McGrath*, 95 Mo. 193, 8 S. W. 425. A corporation organized for encouragement of debating, reading, enjoyment of rational social amusements and playing lawful games is exempt from payment of the tax. *State ex rel. v. Lesueur*, 99 Mo. 552, 13 S. W. 237. Where railroads file articles of agreement of consolidation, the tax must be paid, although they had each individually paid an incorporation tax formerly. *State ex rel. v. Lesueur*, 145 Mo. 322, 46 S. W. 1075. See Const., Art. 10, Sec. 21.

The money required to be paid by incorporators as a prerequisite to the issuance of a certificate of incorporation is not a fee but a tax levied for revenue purposes and must be proportioned to the true value of the actual assets taken as

Capital stock, irrespective of the proposed capitalization. *State ex rel. v. Roach*, 266 Mo. 435, 181 S. W. 90.

The legislature may prescribe the conditions under which domestic corporations may be organized. *Lukens v. Ins. Co.*, 269 Mo. 574, 191 S. W. 418.

Sec. 9736. Amendments to articles of incorporation—construction of act—tax on increase of stock.—All amendments to articles of association of corporations organized under the laws of this state, made and filed in the office of the secretary of state, are and shall be and become a part of the articles of association of the corporation adopting and filing the same; and this section shall not be so construed as to give any corporation whose articles are amended as in this article contemplated, any greater rights than though the subject of the amendments had been incorporated into the original articles of association; and any corporation, company or association which may increase its capital stock under the provisions of this article shall pay the additional amount provided by law for such increase. (R. S. 1909, § 2977.)

A corporation wishing to extend the life of its charter must pay an organization tax just as if it were an entirely new corporation. *State ex rel. v. Roach*, 269 Mo. 437, 190 S. W. 862.

Sec. 9743. Stock deemed personalty, how transferred.—The stock of every company formed under this article shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company; but no shares shall be transferred until all previous calls thereon shall have been fully paid in. (R. S. 1909, § 2984.)

Shares of corporate stock are personalty over which the owner has the same *jus disponendi* as over other personalty. *Banta v. Hubbell*, 167 A. 38, 150 S. W. 1089.

A transfer of shares of stock is binding between the parties to it, and passes all the right of the party making it, although not registered on the books. If the company unlawfully declines to register the stock for the assignee, he has a right of action against the corporation for the value of his shares. *St. Louis, etc. Co. v. Goodfellow*, 9 Mo. 149. Any restriction in the by-laws of the right of alienation of shares of stock would be against public policy and void. *Moore v. Bank*, 52 Mo. 377. Also see *Kretzer v. Cole*, 193 A. 99, 181 S. W. 1066, and *Trust Co. v. Lumber Co.*, 118 Mo. 447, 24 S. W. 129. A transfer of unregistered stock is good against an execution creditor of the stockholder who had notice of the transfer before he bought at execution sale. *Wilson v. Ry.*, 108 Mo. 588, 18 S. W. 286.

Mandamus will not lie to compel a transfer of stock as the transferee has an adequate remedy at law in a suit for damages. *State ex rel. v. Rombauer*, 46 Mo. 155; *State ex rel. v. Bank*, 174 A. 589, 163 S. W. 945.

The object of the statute in requiring the stock to be transferred on the books is to enable the corporation to know to whom to pay dividends and who are entitled to vote. When one buys stock he can compel its transfer on the books. *Crenshaw v. Mining Co.*, 110 A. 355, 86 S. W. 260. A by-law providing that no transfer shall be registered while the holder of the stock is in arrears to the corporation cannot prevent transfer where the holder has paid all calls made up to that time. *Kahn v. Bank*, 70 Mo. 262.

Depositing stock as collateral to secure surety on note given by owner of stock to raise money to pay for it is not an assignment of the stock, so as to give the surety title over the lien of the corporation given by the by-laws to secure indebtedness of original holder. *Bank v. Durfee*, 118 Mo. 431, 24 S. W. 133. But see *Davey v. Newell*, 169 A. 565, 154 S. W. 147. Where unissued stock has been fairly trans-

ferred to another by parol, the transferrer is not liable to a creditor of the corporation. The law does not make it essential to title that the stock should be transferred on the books of the corporation. *Dain Mfg. Co. v. Seed Co.*, 95 A. 144. S. W. 951.

A share of stock is a mere chose in action. 95 A. 174. Assignment on books of company is sufficient without taking out new certificates in name of assignee. Mo. 382. While certificate of stock is not a negotiable instrument, yet it partakes to a great extent of the qualities of a negotiable security when power of attorney signed, even in blank. 43 A. 84; 56 A. 145; 148 Mo. 588. Equity will protect the claims of the holder of stock irregularly transferred. 72 Mo. 461; 25 A. 643; 1 A. 206, 486; 38 A. 647; 51 A. 198; 71 A. 467; 90 Mo. 522; 92 Mo. 635; 108 Mo. 601; 110 Mo. 83; 123 Mo. 603; 128 Mo. 559; 7 A. 16; 13 A. 197; 71 A. 467; 74 A. 537. See section 966; 2 A. 61; 6 A. 575; 8 A. 249, 580, 604; 9 A. 133; 21 A. 526; 44 A. 184; 45 A. 11; 52 A. 207; 56 A. 151, 153; 71 A. 478; 85 A. 55, 569; 7 Mo. 461; 9 Mo. 149; 10 Mo. 382; 37 Mo. 525; 45 Mo. 513; 46 Mo. 155; 48 Mo. 136; 55 Mo. 146; 74 Mo. 136; 85 Mo. 55; 107 Mo. 142; 108 Mo. 588; 113 Mo. 21; 118 Mo. 442, 460, 470; 122 Mo. 637; 123 Mo. 615; 124 Mo. 165; 128 Mo. 575. Transfer of stock in falling corporation, in order to avoid liability, is void as to creditors. 85 A. 56. The record owner of stock is entitled to the dividends, even though the corporation has notice of the transfer. 83 A. 470. It need not be made upon the books of the company in order to entitle the transferee to dividends, as against the transferrer. 90 A. 134.

Sec. 9744. Books to be kept by corporation, shall contain what—shall be open to inspection, when.—Every such corporation shall keep a book in which the transfer of shares of its stock shall be registered, and another book containing the names of its stockholders, which books shall at all times, during the usual hours of business, for thirty days previous to an election of directors, be open to the examination of the stockholders. (R. S. 1909, § 2985.)

The right of a stockholder to examine all the books and records of a corporation at all seasonable times is a common law right. The manner in which he can do so may be regulated, but his motive is immaterial. *State ex rel. v. Ry.*, 29 A. 301; *State ex rel. v. Laughlin*, 53 A. 542; *State ex rel. v. Mfg. Co.*, 129 A. 206, 107 S. W. 1112. *Mandamus* is proper remedy to compel inspection, although the corporation be foreign. *State ex rel. v. Lazarus*, 127 A. 401, 1055 S. W. 780.

Stockholder entitled to inspect books of corporation without disclosing purpose for which he desires to do so. 29 A. 326; 108 Mo. 606; 118 Mo. 441; 139 Mo. 379; 72 Mo. 119. The purpose of the statute is to enable the corporation to deal with intelligence with the stockholders. 95 A. 146; 110 A. 365. The closing of the books for thirty days previous to an election only closes them so far as the transfer of stock is concerned. 29 A. 301; 53 A. 542.

Sec. 9745. Officer in charge of books liable, when.—If any officer having charge of such books shall, upon the demand of a stockholder, refuse or neglect to exhibit and submit them to examination, he shall, for each offense, forfeit the sum of two hundred and fifty dollars. (R. S. 1909, § 2986.)

The right of the stockholder to examine the books of the company is a common law right. 53 A. 542. The corporation cannot deny it upon the plea that it would be inconvenient. 29 A. 301. Stockholder may do so without disclosing the purpose of the examination. 29 A. 326. *Mandamus* is the proper remedy to compel an officer to submit books to inspection. 29 A. 301.

Sec. 9746. Annual meeting, when held.—An annual meeting of shareholders for the election of directors shall be held by all joint stock corporations on a day which each corporation shall fix

by its by-laws; and if no day be so fixed, then on the second Monday in the month of January. (R. S. 1909, § 2987.)

Directors, elected at a meeting held outside of the State, are de facto officers. 33 Mo. 354.

Sec. 9747. By-laws for certain purposes, who may make.—By-laws to direct the manner of taking the votes of stockholders on the question of increasing or diminishing the number of directors or trustees, of changing the corporate name, may be made by the directors of the corporation for the time being. (R. S. 1909, § 2988.)

Directors under this section can only make by-laws concerning the matters stated. Neither they nor the stockholders can pass a by-law prohibiting a stockholder from selling his stock until he has offered it to each director and it has been refused by him, or while he is indebted to the corporation. Brinkerhoff, etc. Co. v. Lumber Co., 118 Mo. 447, 24 S. W. 129.

By-laws of a corporation must be adopted by the members of the corporate body and cannot be adopted by the directors unless the charter or fundamental law so provides. Klix v. Polish, etc. Parish, 137 A. 347, 118 S. W. 1171.

Power to make by-laws resides in the corporation itself, and must be exercised by the stockholders. 8 A. 249; 118 Mo. 447; 56 A. 145. By-laws of a corporation, when properly adopted, are as binding on the members as its charter is. 119 Mo. 9. But they must not be repugnant to its charter. 9 Mo. 191; 39 A. 583; 118 Mo. 447; 25 A. 642; 9 A. 299; 78 Mo. 609; 52 Mo. 377; 34 Mo. 423. See section 9749. Also 44 A. 68; 75 A. 301. This section gives the directors no power to impose conditions on the transfer of stock. 118 Mo. 447.

Sec. 9748. By-law not valid, when.—No by-law of any such corporation regulating the election of its directors shall be valid unless it shall be made at least sixty days before the day appointed for the election to be held. (R. S. 1909, § 2989.)

“Section 9749. Powers of corporations defined.—Every corporation, as such, has power:

“First. To have succession by its corporate name for the period limited in its charter, and when no period is limited, for twenty years.

“Second. To sue and be sued, complain and defend in any court of law or equity.

“Third. To make and use a common seal and alter the same at pleasure.

“Fourth. To hold, purchase, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter or the law creating it, and also to take, hold and convey such other property, real, personal or mixed, as shall be necessary or requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability belonging to the corporation.

“Fifth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

"Sixth. To make by-laws, not inconsistent with existing law, for the management of its property, the regulation of its affairs and for the transfer of its stock.

"Seventh. To increase or diminish by a vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees to not less than three, nor more than twenty-one, and may in like manner change its corporate name without in anywise affecting its rights, privileges or liabilities; such changes of name or number of directors or trustees shall take effect and be in force from the date at which the president or secretary of such corporation shall file with the secretary of state an affidavit duly recorded in the office of the recorder of deeds of the county in which the corporation is located, setting forth the name adopted or the number of directors or trustees fixed, together with the date at which such change in name or number of directors or trustees was voted by the stockholders of such corporation. Any corporation may, at a meeting duly called and held, notice of such meeting first having been given in manner and form as is provided in sections 9740 and 9741, Revised Statutes, 1919, for increase of capital, increase or decrease the par value of its shares of stock and, respectively, correspondingly, reduce or increase the number thereof by a vote of a majority of the stock of the corporation: *Provided*, that no corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized." (R. S. 1909, § 2990.) Amended Laws, 1913, p. 165:

General application.—Only such powers and rights can be exercised under corporation franchises as are clearly comprehended within the words of the grant or derived therefrom by necessary implication, regard being had to the object of the grant. *Watson Seminary v. Pike Co.*, 149 Mo. 57, 50 S. W. 880; *State ex rel. v. Murphy*, 130 Mo. 10, 31 S. W. 594; *State ex rel. v. Orear*, 144 Mo. 157, 45 S. W. 1081; *Prairie Slough, etc. Club v. Kessler*, 252 Mo. 424, 159 S. W. 1080. A stockholder of a corporation created in 1864 had, after the adoption of the Constitution of 1875, the right to cumulate his vote for directors, whether the charter gave or withheld such right. *Gregg v. Mining Co.*, 164 Mo. 616, 65 S. W. 312. A charter granted by the legislature exempting property from taxation for a specified number of years constitutes a contract which cannot subsequently be impaired. *Scotland Co. v. Ry.*, 65 Mo. 123. Private charters are contracts. *Watson Seminary v. Pike Co.*, 149 Mo. 57, 50 S. W. 880.

An *ultra vires* contract of a corporation is void, and is not the subject of ratification. *Ellett etc. Co. v. Stores Co.*, 132 A. 513, 112 S. W. 4.

Duration.—The twenty-year limitation applies only in event the fundamental articles of a particular corporation do not otherwise provide. And where it appears from the articles that they intend to establish a perpetual institution of learning, it is the duty of the court to effectuate that intention. *State ex rel. v. Lesueur*, 141 Mo. 29, 41 S. W. 904.

The term "perpetual succession," when used in a corporation's charter, qualifies the succession and not the duration of corporate existence, and implies nothing more than a continuous succession during the existence of the corporation as fixed by its charter. *State ex rel. v. Payne*, 129 Mo. 468, 31 S. W. 797; *State ex rel. v. Road Co.*, 138 Mo. 332, 39 S. W. 910; *State ex rel. v. Road Co.*, 207 Mo. 54, 105 S. W. 752. The twenty-year limitation does not apply to a corporation purely

charitable. *State ex rel. v. Ladies of Sacred Heart*, 99 Mo. 533, 12 S. W. 293. Nor to an educational institution. *State ex rel. v. Board of Trustees*, 175 Mo. 52, 74 S. W. 990. A corporation whose charter has expired is thereafter incapable of making a conveyance of its franchise and property. *State ex rel. v. Road Co.*, 207 Mo. 54, 105 S. W. 752; *Bradley v. Reppell*, 133 Mo. 545, 32 S. W. 645.

Power to sue and be sued.—An unincorporated local trade union with benevolent association features can sue in its own name. *Wiehtuechter v. Miller*, 208 S. W. 39. A corporation has the right to sue for damages caused by libel or slander against it. *St. James Academy v. Gaiser*, 125 Mo. 517, 28 S. W. 851. A corporation whose existence has culminated by the expiration of its charter life cannot be sued. *Meramec Spring etc. Co., v. Gibson*, 268 Mo. 394, 188 S. W. 179.

Seal—The power of every corporation to make and use a common seal is permissive but not mandatory, and if it has no seal none is required to be affixed to an instrument. *Pullis v. Pullis*, 157 Mo. 565, 57 S. W. 1095.

See Sec. 2177.

Holding and conveying property.—Where a conveyance is made to the trustees, without naming them, or any of them, title vests in the corporation named in the deed. *Keith etc. Co. v. Bingham*, 97 Mo. 196, 10 S. W. 32.

Art. 2, Sec. 8, Const., forbids religious corporations, except to hold real estate for church edifices, parsonages and cemeteries. *Klix v. Parish*, 137 A. 347, 118 S. W. 1171; *Society etc. v. Law*, 267 Mo. 667, 187 S. W. 1165.

A municipal corporation, under its general statutory power, may own real estate outside its city limits, when not prohibited by its charter, if it needs it for the purpose of carrying out one of its proper corporate functions and duties. *Hafner v. St. Louis*, 161 Mo. 34, 61 S. W. 632.

The right of way of a railroad company in a public street is an incorporeal hereditament, which may be mortgaged by the company. *Hovelman v. Railroad*, 79 Mo. 632. Church corporations have power to mortgage their real estate. *Keith etc. Co. v. Bingham*, 97 Mo. 196, 10 S. W. 32.

The fact that the articles of agreement enumerated powers other than those authorized, could not give the corporation power to acquire land for such additional purposes. *Prairie Slough etc. v. Kessler*, 252 Mo. 424, 159 S. W. 1080.

Section 3001, R. S. 1909, repealed by act of 1919, relating to manner of conveying land, was substantially the same as Sec. 2790, R. S. 1909, new section 2177.

Appointing agents and making by-laws.—Where one owns practically all the stock of a corporation, a contract signed in his own name, concerning the corporation, may bind it where the facts indicate that intention and understanding of both parties. *Jones v. Williams*, 139 Mo. 1, 39 S. W. 486. A corporation may employ an agent to perform services consonant with its general design without any specific authority for that purpose conferred by its charter. *Kitchen v. Ry. Co.*, 59 Mo. 514. No formal resolution of the board of directors is a prerequisite to the employment of counsel for a corporation. *President etc. Co. v. Coquard*, 40 A. 40. A savings bank may pass a by-law requiring cashier to give bond. *Savings Bank v. Hunt*, 72 Mo. 597. By-laws of a corporation must be adopted by the members of the corporate body and cannot be adopted by the directors unless the charter or fundamental law so provides. *Klix v. Polish etc. Parish*, 137 A. 347, 118 S. W. 1171.

A by-law of a business corporation attempting to impose restrictions upon the transfer of stock is invalid. *Kretzer v. Cole*, 193 A. 99, 181 S. W. 1066.

NOTE—In order to extend the corporate existence, action must be taken during the life of the corporation.

To sue and be sued.—A corporation is equally responsible as an individual for wrongs committed by it. 74 Mo. 495. It is civilly responsible for an act of trespass or tort. 36 Mo. 546; 62 Mo. 119. For injury resulting from the negligence of duty. 55 Mo. 33; 55 Mo. 476. May be used for malicious prosecution. 17 Mo. 213; 75 Mo. 319. Liable for acts of officers and agents acting within the scope of authority. 29 A. 31. A corporation created by one state may sue in another. 1 Mo. 184; 176 Mo. 200. A foreign corporation may be sued by attachment. 9 Mo. 421; 29 Mo. 75.

Holding and conveying property.—Where a conveyance is made to the trustees without naming them, or any of them, title vests in the corporation named in the deed. 97 Mo. 196.

May purchase and convey such real and personal property as the purposes of the corporation may require. 32 Mo. 305. It will be presumed that a corporation accepting a conveyance of land, accepted it for a proper and legitimate purpose. 117 Mo. 261. The capacity to take and convey property differs in no essential particular from that of natural persons. 102 Mo. 472. A transfer of land by a de facto corporation is valid as against all persons, except the State. 113 Mo. 633. It may sell its property to a stockholder in payment of a debt, and a conveyance is valid. 168 Mo. 272.

Appointing agents and making by-laws.—Where one owns practically all the stock of a corporation, a contract signed in his own name, concerning the corporation, may bind it where the facts indicate that intention and understanding of both parties. 139 Mo. 1. A savings bank may pass a by-law requiring cashier to give bond. 72 Mo. 597. A corporation may change its name without affecting its rights or liabilities. 98 A. 227, 234.

A corporation can only act through its agents, and whatever the agent does within the scope of his authority is the act of the corporation. 55 Mo. 201; 3 A. 589. And will bind the corporation without proof of express power to do the act. 29 Mo. 68; 33 Mo. 354; 59 Mo. 514; 81 Mo. 137. Agent's authority may be implied from the manner in which he has been permitted to transact the business. 104 Mo. 531. A corporation cannot express its will except through its agents and officers. 63 A. 85. Officers of a corporation may advance money to, or indorse for it, and the transaction will bind the corporation. 131 Mo. 280. Agents' authority need not be authenticated by the corporate seal. 52 Mo. 480; 75 Mo. 178; 66 Mo. 468. Directors of a corporation are trustees for the stockholders. 119 Mo. 9; 129 Mo. 106. May employ counsellor. 45 Mo. 419; 61 Mo. 89. Directors of a corporation are presumed to serve gratuitously. 107 Mo. 451; 44 A. 59. Directors cannot vote themselves a salary. 39 A. 460.

The power to make by-laws rests in the corporation itself, and must be exercised by the stockholders. The board of directors has no such power. 8 A. 249; 118 Mo. 447; 56 A. 145. The power to make by-laws may be conferred upon the board of directors by the charter or fundamental law. 25 A. 642; 39 A. 583. The by-laws of a corporation, when properly adopted, are as binding upon the members as a charter provision. 119 Mo. 9; 101 A. 91. A by-law which is unreasonable is void. 2 A. 96; 101 A. 91. A by-law which takes away a common law right, or is contrary to statutory enactment, is void. 2 A. 96; 118 Mo. 447; 78 Mo. 609; 9 A. 290. By-laws may be amended so as to change the rights of stockholders as they existed before the amendment. 34 Mo. 423.

A corporation is authorized but not required to have a seal. 157 Mo. 565. 77 Mo. 180; 55 Mo. 218. Where a seal is affixed and the signatures of proper officers are proved, it will be presumed that the officers did not exceed their authority, and the seal itself is *prima facie* evidence that it was affixed by proper authority. 42 Mo. 74. A chattel mortgage executed by a corporation need not be sealed. 123 A. 547. See also, Sec. 2177.

A common seal of a corporation affixed to a deed must be proved to have been adopted by the corporate authority. 1 Mo. 664. A deed to the trustees of a corporation, without naming them, passes the title to the corporation. 97 Mo. 196. A deed to a pretended corporation is a nullity. 107 Mo. 616. But where grantor has received and retained purchase price, he will be stopped from questioning the power to receive the grant. 145 Mo. 622. An instrument executed by the president, without being attested by the seal, is presumed to have been executed without authority. 88 A. 62. A sale of all the property of a corporation will not be held void because some stockholders did not consent, even though such sale amounts to a practical dissolution. 180 Mo. 1. If a corporation has no seal, none is required to be affixed to a deed conveying real estate. 157 Mo. 583. A deed signed by the vice-president is *prima facie* valid when attested by the corporate seal. 145 Mo. 418.

Sec. 9752. Majority of board shall constitute quorum, when—powers.—When the corporate powers of any corporation are directed by its charter, or the provisions of this law, to be exercised by any particular body or number of persons, a majority of such body of persons, if it be not otherwise provided in the charter or law creating it, shall be a sufficient number to form a board for the transaction of business; and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act: *Provided*, that not less than three members of such board shall be citizens and residents of the state, and all meetings of boards of directors of such corporations, other than mining corporations and railroad corporations, shall be held at the general office of the company within the state. (R. S. 1909, § 2992.)

An assignment for the benefit of creditors must be made by resolution of board of directors when a majority of the board are present. *Calumet Paper Co. v. Ptg. Co.*, 144 Mo. 331, 45 S. W. 1115.

It is sufficient if all the meetings of the stockholders and directors were held on the Missouri side of the building through which the state line ran, though the company had no office in Missouri, and its business was on the Kansas side. *Boatmen's Bank v. Gillespie*, 209 Mo. 217, 108 S. W. 74. And see *Missouri Lead Co. v. Reinhard*, 114 Mo. 218, 21 S. W. 488.

Directors can neither represent nor bind a corporation, unless duly assembled and acting as a board. 119 Mo. 9; 54 A. 202. The action of the individual members will not bind the corporation. 54 A. 202; 26 Mo. 102; 48 Mo. 408. A majority constitutes a quorum and a majority of the quorum may transact the business. 39 A. 453; 92 Mo. 79. Acts of less than a majority of the board is invalid. 68 A. 546. The directors of a corporation are its business managers. 44 A. 172. Directors may delegate to others the power to transact business requiring the highest degree of skill and judgment. 139 Mo. 1. Officers rendering service under an implied agreement may receive reasonable compensation. 166 Mo. 28. May employ counsel without formal resolution of board. 45 Mo. 419; 61 Mo. 89; 77 A. 434. Parol authority may be given for drawing bills of exchange. 51 Mo. 43.

The rule that the majority in interest is entitled to the control, within the bounds of good faith, is universally acknowledged and is implied in every contract when the contrary is not expressed. 180 Mo. 1.

NOTE—It is highly important that full and accurate minutes should be kept of all the proceedings had at a meeting of the board of directors.

Sec. 9755. Dissolution of corporation—who shall be trustees—powers and duties of.—Upon the dissolution of any corporation already created, or which may hereafter be created by the laws of this state, the president and directors or managers of the affairs of said corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full powers to settle the affairs, collect the outstanding debts and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them; to sue for and recover such debts and property by the name of the trustees of such corporation, describing it by its corporate name, and may be sued by the same; and such trustees shall be jointly and severally respon-

sible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. (R. S. 1909, § 2995.)

Insolvency and dissolution.—A corporation is a going concern, in contemplation of law, so long as its property remains in its possession, unaffected by liens or process of law. *Alberger v. Bank*, 123 Mo. 313, 27 S. W. 657. Mere insolvency of a company does not *ipso facto* work its dissolution. *Ready v. Smith*, 170 Mo. 163, 70 S. W. 484. Nor does cessation of active business imply a dissolution, so as to deprive the corporation of its right to bring an action. *Yoree v. Ins. Co.*, 180 Mo. 153, 79 S. W. 175. Nor does a failure to elect officers dissolve the corporation. *Yoree v. Ins. Co.*, 180 Mo. 153, 79 S. W. 175. See also, *Barrett v. Stoddard County*, 183 S. W. 644. Nor will a sale of its property *per se* accomplish its dissolution. *Kansas City Hotel Co. v. Sauer*, 65 Mo. 279; *Hill v. Fogg*, 41 Mo. 563.

If a corporation suffers acts to be done which have the effect to destroy the object for which it was created, it is equivalent to a surrender of its rights. *Moore v. Whitcomb*, 48 Mo. 543; *Ford v. Ry.*, 52 A. 439. This section does not apply to a solvent bank whose charter has expired by limitation and whose assets have passed into the hands of its directors as trustees, and been by them assigned to a new bank re-chartered under the same name. *Clifford Banking Co. v. Com. Co.*, 195 Mo. 262, 94 S. W. 527.

Upon the dissolution of a corporation its real estate does not revert to its grantor but vests in the president and directors or managers of its affairs as trustees for the benefit of creditors and stockholders. *Richards vs. Coal and Mining Co.*, 221 Mo. 149, 119 S. W. 953.

Whenever the charter expires by reason of the time mentioned in the articles of incorporation having expired, the affairs of the company must be wound up as provided in this section. *Scott v. Davis*, 198 A. 512, 200 S. W. 723.

Effect of dissolution.—Debts due a corporation do not become extinct upon its dissolution. The officers as trustees have the power to collect them. *McCoy v. Farmer*, 65 Mo. 244; *Kansas City Hotel Co. v. Sauer*, 65 Mo. 279. Limitation runs from dissolution of corporation in favor of secretary against a right of action for not paying over money collected before the dissolution. *Landis v. Saxton*, 105 Mo. 486, 16 S. W. 912. The officers and managers are not liable to creditors of the corporation unless assets of the corporation have come into their hands. *Isler v. Scudder*, 12 A. 581. Act of trustees of dissolved bank in erroneously paying to stockholders money which should have gone to creditors does not of itself give trustees a right of action against the stockholders for reimbursement. *Daugherty v. Poundstone*, 120 A. 300, 96 S. W. 728. Trustees of a dissolved corporation are not liable personally nor as trustees on a covenant of seisin in an assignment of a lease. The purchaser buys at his peril. *Shannon v. Mastin*, 135 A. 50, 114 S. W. 1127.

A dissolution will be presumed when it ceased to do business and has disposed of its property. 9 A. 114; 43 A. 482. But such acts would not *per se* accomplish a dissolution. 41 Mo. 563; 65 Mo. 279; 11 A. 594. Where a corporation entirely abandons the end and object for which it was created, it amounts to a dissolution. 48 Mo. 534; 50 A. 648; 43 A. 482. Likewise, hopeless insolvency. 26 Fed. 572. Dissolution will not be presumed from non-user. 9 A. 114. The mere adoption of a resolution to discontinue business does not have that effect. 74 Mo. 286. A corporation is dissolved by an expiration of its charter by limitation. 84 Mo. 208; 133 Mo. 545. The question of expiration can only be adjudicated by the state in a direct proceeding. 11 A. 55; 84 Mo. 202; 133 Mo. 545; 39 Mo. 119. The consolidation of two or more companies into one is a dissolution of all of them. 106 Mo. 594.

NOTE—The bank commissioner holds that a corporation may, by unanimous vote of all its stockholders, when evidenced by the affidavit of the president or secretary, and filed in the office of the bank commissioner, become a *de facto* dissolved corporation for the purpose of the records of that office.

Sec. 9756. Voluntary dissolution of corporations, when permitted—judgment of dissolution, when entered.—Whenever the

directors or other officers having the management of the concerns of any private corporation organized under the laws of this state, or a majority of the stockholders of such corporation shall discover that the stock, property and effects of such corporation have been so far reduced by losses or otherwise that it will not be able to pay all just demands against the same or to afford security to those who may deal with such corporation; or whenever the stockholders holding at least two-thirds in value of all the shares of stock in said corporation shall adopt a resolution favoring a dissolution of such corporation, whether said corporation be indebted or not, or whether its stock has depreciated below par value or not, such corporation may be dissolved by a judgment or decree of the circuit court of the county in which its principal office for the transaction of its business is located, and if such office is situated in the city of St. Louis, such judgment of dissolution may be rendered by either of the circuit courts of eighth judicial circuit. And whenever, by unanimous vote of all the shareholders, a resolution shall be adopted favoring the dissolution of said corporation, after the payment of all debts, claims or bills, then said corporation may be dissolved by filing an affidavit of dissolution with the secretary of state, setting forth the above facts, and when said affidavit of dissolution is filed it shall be taken as prima facie evidence of such voluntary dissolution. (R. S. 1909, § 2996, Amended Laws 1919, p. 235.)

This section does not authorize stockholders to dissolve corporation, but merely to adopt a resolution favoring dissolution, upon which dissolution may be accomplished by judgment or decree of circuit court, application for which must be made by petition, and notice given to all persons interested in corporation by summons. *Luehrmann v. Trust Co.*, 192 S. W. 1026.

Sec. 9757. Application for dissolution, how made—petition shall contain what.—Application for such dissolution shall be made by a petition, verified by the president and secretary or by a majority of the directors, setting forth a clear and concise statement of the reasons which induce the stockholders to desire a dissolution of the corporation. Among other things, said petition shall contain a full and true inventory of all the estate, both real and personal, in law and in equity, of such corporation, and of all the books, vouchers and securities relating thereto; also a full and true account of the capital stock of such corporation, specifying the names of the stockholders, their residence, if known, the number of shares belonging to each, the amount paid in upon such shares respectively and the amount, if any, due thereon; also all incumbrances on the property of such corporation by judgment, mortgage, pledge or otherwise, a list of all the creditors of said corporation and of all engagements entered into by said corporation, not fully satisfied or cancelled. (R. S. 1909, § 2997.)

Sec. 9758. Interested persons, appearance and summons of—general notice to be published—continuance.—Upon the filing of such petition an order shall be made by the court, if filed in term time, or by the clerk, if filed in vacation, requiring all persons interested in such corporation to show cause, if any they have, why such corporation should not be dissolved on or before a day or term of said court therein named. The several officers of said corporation and the various stockholders therein may enter their voluntary appearance in said court at the time of filing such petition, and all stockholders who reside in the county wherein said petition has been filed and all creditors and persons having unexecuted contracts with said corporation, and who reside in said county who do not enter their voluntary appearance in said court shall be notified by a summons, under the hand and seal of the clerk of the court, reciting the filing of said petition, its general purpose and nature, and citing them to appear in said court on a day to be named in said writ to show cause, if any they have, against such dissolution, such day being fixed not less than twenty-one days nor more than thirty days after the filing of said petition. In addition to said summons notice of a general nature and cause of said application shall be given to all other stockholders, creditors and persons having unexecuted contracts with said corporation, by publication in some newspaper of general circulation in said county once a week for three weeks consecutively, and proof of service and publication shall be made before any order is made upon such petition. The court shall have power to continue such application for service upon all interested parties from time to time, to issue new writs if necessary, according to the practice therein: Provided, that in addition to said publication, it shall be the duty of the secretary of the corporation, at least fifteen days before the day fixed by the court for the hearing of such application, to mail a copy of such notice to all stockholders non-resident of the county by depositing the same in the post office properly directed to the stockholder at his last known address. (Laws 1919, p. 223.)

Sec. 9759. Judgment of dissolution entered, where—certain property not to be diverted.—If upon a hearing of such application the court shall be satisfied that the prayer of such petition can be granted without prejudice to the public welfare, or the interest of the corporators or the creditors of such corporation, it may enter a judgment or decree dissolving such corporation and direct that the president and directors or managers of said corporation shall take charge of its assets and administer them as now provided by section 9755 of the Revised Statutes of Missouri for the year 1919: *Provided*, that no property devoted to religious,

literary or charitable uses shall be diverted from the objects for which they were granted by means of the powers herein given to any corporation to dissolve, but the same shall be preserved by the decree of court. (R. S. 1909, § 2999.)

Sec. 9760. Copy of judgment of dissolution to be sent to secretary of state.—Whenever the court shall grant such judgment of dissolution, the clerk thereof shall send a certified copy of the order of the court to the secretary of state, the expense of which shall be taxed as costs in the case, and said copy shall be filed with the incorporating papers of such company. (R. S. 1909, § 3000.)

NOTE—If a bank or trust company, copy of judgment should be sent to bank commissioner.

When the objects of the corporation have been abandoned, or when it appears that the power to do business does not exist, then a legal dissolution may be declared. 50 A. 648. A corporation may go into voluntary liquidation, even though it is on the eve of extinction by command of the law itself. 3 A 159; 69 Mo. 611. Where a corporation is dissolved a court of equity will lay hold of the assets for the purpose of paying *bona fide* creditors. 41 Mo. 563; 42 Mo. 63; 149 Mo. 74. But such court will respect liens already acquired against the assets. 122 Mo. 154. Loss of property, failure to hold meetings and elect officers does not necessarily amount to a forfeiture of corporate franchise. 50 A. 648; 180 Mo. 153. Corporation is deemed to be dissolved when it ceases to do business and becomes divested of its property. 9 A 114; 43 A. 482. But such acts would not *per se* accomplish such dissolution. 41 Mo. 563; 65 Mo. 279; 11 A. 594; 57 Mo. 446. A corporation may dissolve by surrendering its franchise. 48 Mo. 543. A mere resolve to discontinue business is not a dissolution. 74 Mo. 286. Willful misuser or non-user by a corporation of its franchise subjects it to dissolution. 140 Mo. 539; 142 Mo. 325. No one is estopped from asserting dissolution by expiration of charter. 161 Mo. 595. The courts will not presume forfeiture. 82 A. 96. Insolvency or inability to carry out the purposes of its existence does not *ipso facto* work a dissolution. 170 Mo. 163. A consolidated corporation succeeds to all the rights and liabilities of the former corporation. 98 A. 227. A consolidation of two or more corporations into one is a dissolution of all of them and the formation of a new one. 106 Mo. 594. A sale of all the property in good faith without consent of all the stockholders is not void, even though it amounts to a practical dissolution. 180 Mo. 1.

Sec. 9761. Directors personally liable, when.—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted as long as they shall respectively continue in office: *Provided*, that the amount for which they shall be liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection, in writing, with the clerk or other officer of the corporation having charge of the books, they shall be exempted from the said liability. (R. S. 1909, § 3002.)

A transfer of all the assets and the acceptance of stock certificates in another corporation, in lieu, is not declaring an illegal dividend, which renders the directors

liable. 11 A. 592; 90 Mo. 307. This section refers to debts voluntarily contracted and does not refer to a judgment for damages caused by the negligence of an agent. 34 Mo. 573. The directors are not liable to a stockholder who is a creditor except for a debt contracted in the ordinary course of business. 19 Mo. 327; 43 Mo. 4. An officer cannot avoid personal liability for his fraudulent acts, on the plea that he was acting for the corporation. 139 Mo. 627. Dividends can be paid out of the profits only, and cannot be drawn from the capital. 172 Mo. 491. The payment of a dividend which diminishes the capital stock is a fraud upon creditors. 172 Mo. 491.

Sec. 9762. Officers and directors personally liable, when.—If the officers and directors of any corporation shall knowingly purchase for the corporation, of which they are officers or directors, any property, real or personal, and pay therefor more than the actual value thereof, they shall be jointly and severally liable for the debts of the corporation to an amount equal to the difference between the purchase price of said property bought and the actual value thereof: *Provided*, that if any of the officers or directors be absent at the time of making such purchase, or shall object thereto, and shall file their objection in writing, with the clerk or other officer of the corporation having charge of the books, they shall be exempted from the said liability. (Laws 1911, p. 151.)

Sec. 9773. Records of corporation evidence, when.—The records of any company incorporated under the provisions of this chapter, or of chapter 108, or of article XV of chapter 50, or of article X of chapter 98, or copies thereof, duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any suit to which such company may be a party. R. S. 1909, § 3013.)

Omission of minutes to show that any of the directors were present at meeting of the board may be supplied by parol. *St. Louis Rawhide Co. v. Hill*, 72 A. 142.

It is the duty of a corporation to keep a record of the minutes of the meetings of its stockholders and directors and such minutes should show the date when the meetings were held and who were present. *Howard v. Strode*, 242 Mo. 210, 230. 146 S. W. 792.

Sec. 9781. Name of expiring corporation may be adopted by its successor.—Whenever the charter of any corporation in this state is about to expire by limitation of time, and the stockholders of such corporation, or a majority in interest thereof, desire to incorporate under the general corporation laws of this state for the purpose of continuing the business of such expiring corporation, it shall be lawful for the new corporation to adopt the corporate name of such old corporation: *Provided*, that nothing herein contained shall be construed to confer upon the new corporation any property, rights, privileges or franchise enjoyed or owned by the old corporation, save and except the use of the old name. (R. S. 1909, § 3021.)

See section 9737 which provides that no certificate of incorporation or of change of name shall issue to any corporation under the same name as that of any existing corporation, or an imitation thereof.

CHAPTER 108.

STATE BANKING DEPARTMENT.

BANKS, TRUST COMPANIES, SAFE DEPOSIT INSTITUTIONS, AND LOAN AND INVESTMENT COMPANIES.

Article I—State Banking Department.

II—Banks.

III—Trust Companies.

IV—Merger and Consolidation of Trust Companies.

V—Saving Banks and Safe Deposit Institutions.

VI—Mortgage Loan Companies.

ARTICLE I.

STATE BANKING DEPARTMENT.

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Sec. 11673. State banking department continued.—There is hereby continued in this State a Banking Department, which shall have charge of the execution of the laws relating to banks, private bankers, trust companies and savings and safe deposit companies, and the banking business in this state. Such department shall be designated as the State Banking Department, and shall be under the management and control of a chief officer who shall be called the Bank Commissioner. Said Bank Commissioner shall reside and maintain his office at the City of Jefferson, and the board of the permanent seat of government is hereby required to provide suitable and convenient office room for said banking department. (Laws 1915, p. 104.)

Sec. 11674. Bank commissioner—qualifications—how appointed—deputy commissioners—clerk—examiners, appointment, etc.—The bank commissioner shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold his office for the term of four years; but the governor shall have power to suspend the commissioner from office whenever, in his opinion, the public interest may require it, or with the advice and consent of the senate, to remove him from office. In case of a suspension of said officer, the governor shall report his action to the senate, if it be in session; if not, then at the next session of the general assembly thereafter, together with the reasons therefor; and if the senate shall concur therein, he shall

be removed from office. But if the senate shall, at the same session, fail to concur or to act on the same, said suspension shall thereupon cease. The bank commissioner may appoint a first deputy, a clerk, a stenographer and twelve examiners, and with the consent of the governor in each instance, may employ from time to time such other clerks, examiners, special agents and other employes as he may need to discharge in a proper manner the duties imposed on him by law, and all such appointees shall hold their respective positions during the pleasure of the commissioner. No person shall be eligible for the office of bank commissioner or deputy, or be appointed examiner without first having had at least three years' actual practical experience in a general banking business, or served for a like period of time in the banking department in this or some other state, and no officer or employe of any bank or trust company, or person interested as owner or holder of stock thereof, and no private banker shall be eligible to the office of bank commissioner, deputy or examiner. If a vacancy shall occur in the office of bank commissioner by death, resignation or otherwise, the same shall be filled by appointment by the governor; and such appointee shall hold the office for the unexpired term. The first deputy commissioner shall possess all powers and perform the duties attached to the office of bank commissioner during a vacancy in such office and during the absence or inability of his principal, and the second deputy shall possess all powers and perform the duties attached to the office of bank commissioner during a vacancy in such office and during the absence or inability of the bank commissioner and of the first deputy commissioner. (Laws 1915, p. 104.)

Sec. 11675. Bank commissioner, deputies, clerk, examiners, etc., to take oath—bond to be given.—The bank commissioner, deputy commissioners, clerk, stenographer and examiners, and all special agents and other employes shall each, before entering upon the discharge of his duties, take and subscribe the oath of office containing the usual provisions, and, in addition, that he will not reveal the condition or affairs of any bank, banker or trust company in this state, or any facts pertaining to same, that may come to his knowledge by virtue of his official position, unless required by law so to do in the discharge of the duties of his said office, and said bank commissioner, deputies and examiners shall further execute to the state of Missouri a good and sufficient bond, to be approved by the governor and attorney-general, conditioned that he will faithfully and impartially discharge the duties of his office, and pay over to the persons entitled by law to receive it, all moneys coming into his hands by virtue of his office; and any special agent or other employe shall give such bond, approved as

aforsaid, as may be required of him by the commissioner. The bank commissioner shall give bond in the sum of twenty-five thousand dollars, the deputy commissioners in the sum of fifteen thousand dollars, and each examiner in the sum of ten thousand dollars, and each such bond, after approval by the governor and attorney-general, as above provided, shall be filed with the secretary of state for safe-keeping. The premiums on such bonds, not to exceed one per centum on the amount thereof, shall be paid out of the state treasury upon vouchers approved and audited by the bank commissioner with warrants drawn on the treasurer by the state auditor upon the state banking department fund. (Laws 1915, p. 105.)

Sec. 11676. Salary of bank commissioner, deputies, clerks and examiners.—The bank commissioner shall receive an annual salary of thirty-five hundred dollars, payable in equal monthly installments out of the state treasury by warrant drawn by the state auditor. The first deputy commissioner shall receive an annual salary of twenty-five hundred dollars, the second deputy commissioner an annual salary of twenty-two hundred dollars, the clerk an annual salary of eighteen hundred dollars, the stenographer an annual salary of twelve hundred dollars, and each examiner an annual salary of two thousand dollars, to be paid in equal monthly installments out of the state treasury in the manner last above provided. All appointees shall perform such duties as the commissioner shall assign them, and their compensation, unless fixed by law, shall be as fixed by him and approved by the governor, and paid monthly as above provided. In addition, the actual and necessary traveling and other department or office expenses of the commissioner, his deputies and examiners and other appointees shall be paid out of the state treasury upon vouchers approved and audited by the bank commissioner, with warrants drawn on the treasurer by the state auditor. (Laws 1915, p. 105.)

Sec. 11677. Seal of office.—The bank commissioner shall devise and provide a seal for the use of his office, which shall continue to be the seal of said department. A description of the seal, with an impression thereof, shall be filed in the office of the secretary of state. Every paper executed by the bank commissioner in pursuance of any authority conferred on him by law and sealed with his seal of office, shall be received in evidence and may be recorded in the proper recording offices, in the same manner and with the same effect as a deed regularly acknowledged. (Laws 1915, p. 106.)

Sec. 11678. Records, reports and papers to be preserved.—It shall be the duty of the bank commissioner to carefully pre-

serve all records, reports and papers pertaining to his department. (Laws 1915, p. 106.)

Sec. 11679. Secrets of office not to be divulged—exception.

The bank commissioner, his deputies, clerk, stenographer, each examiner and every employe shall be bound, under oath, to keep secret all facts and information obtained in the course of all examinations, except so far as the public duty of such officer requires him to report upon or take special action regarding the affairs of any bank, private banker, savings and safe deposit company or trust company, and except when he is called as a witness in any criminal proceedings or trial in a court of justice. If any bank commissioner, deputy, clerk, stenographer or examiner shall disclose the name of any debtor of any bank, private banker, savings and safe deposit company or trust company, or anything relative to the private accounts, affairs or transactions of such bank, private banker, savings and safe deposit company or trust company, or shall disclose any facts obtained in the course of his or their examination of any such bank, private banker, savings and safe deposit company or trust company, except as herein provided, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction, be subject to a forfeiture of his office and the payment of a fine of not less than one hundred dollars, nor more than one thousand dollars, *provided, however*, that the bank commissioner, his deputies and each examiner may furnish to the federal reserve board, the federal reserve banks, or to examiners duly appointed by the federal reserve board, or the federal reserve banks, copies of all examinations made, and may disclose to such federal reserve board, federal reserve banks, or examiner, any information with reference to the condition or affairs of state banks or trust companies organized under the laws of this state which become members of a federal reserve bank, or which apply for membership in a federal reserve bank. (Laws 1919, p. 157.)

Sec. 11680. Bank commissioner—deputies and examiners not to be appointed receiver—penalty for oppression in office or neglect of duty.—No bank commissioner, deputy or examiner shall be appointed receiver of any bank, private banker, savings and safe deposit company or trust company whose books, papers and affairs he shall have examined pursuant to his appointment or in the discharge of the duties of his office, but a deputy commissioner or examiner may be appointed by the commissioner a special deputy to assist in the liquidation of any such corporation or private banker under this article; and in case such bank commissioner, deputy or examiner shall wrongfully report any such bank, private banker, savings and safe deposit company or

trust company in an insolvent condition, or in case he shall report any such bank, private banker, savings and safe deposit company or trust company to be solvent, knowing the same to be otherwise, and any person be injured thereby, such person shall have a right of action on the official bond of such bank commissioner, deputy or examiner for his injuries or damages sustained. Such action shall be brought in the name of the state at the relation of the injured party. (Laws 1915, p. 107.)

See State ex rel. Barker v. Sage, 267 Mo. 493, 184 S. W. 984.

Sec. 11681. Bank commissioner and assistants not to accept presents or free transportation—penalty—shall devote entire time to duties of office.—It shall be unlawful for any bank commissioner, deputy, examiner, clerk or special agent, to accept as presents or emoluments any pay or other valuable thing by way of gift, credit or otherwise, directly or indirectly, for the discharge of any act in the line of his official duty other than the remuneration fixed and accorded him by law, and it shall be unlawful for any bank commissioner, deputy, examiner, clerk or special agent appointed under the provisions of this article to accept, receive or ride on any free transportation while engaged on official business, and every bank commissioner, deputy, examiner, clerk or other employe appointed under the provisions of this article shall devote his or her entire time to the performance of the duties herein imposed. (Laws 1915, p. 107.)

Sec. 11682. Penalty for neglect of duty or any misfeasance or malfeasance in office.—Any bank commissioner, deputy, examiner, employe, clerk or stenographer who shall violate his oath of office or shall neglect or violate any of the duties imposed upon him by this chapter, or shall be guilty of any other misfeasance or malfeasance in office for which no other or different punishment is by this chapter provided, shall be deemed guilty of a felony, and upon conviction, shall be punished by imprisonment in the penitentiary for a term of not less than two years nor exceeding five years, or by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county or city jail for not less than one month nor more than twelve months, or by both such fine and imprisonment; and upon indictment of any such bank commissioner, deputy, examiner, clerk or stenographer for any violation of this chapter, such officer or employe shall be disqualified from further discharging the duties of such office or position until such indictment is fully disposed of. (Laws 1915, p. 107.)

Cited in Denny v. Jefferson County, 199 S. W. 250.

Sec. 11683. All moneys received to be paid into state treasury to reimburse state.—The commissioner shall pay, or

se to be paid directly, into the state treasury, for the credit of state banking department fund, all fees for original incorporation or for increasing the capital of any corporation to which this chapter is applicable, and all moneys received by him from corporations, or private bankers, in payment of his charges or assessment against them or of any penalties or forfeitures incurred by them; all moneys recovered in actions brought by the attorney-general under this article; except such penalties and forfeitures, as may, by the Constitution, be required to be paid to the county public school fund of the several counties, and fees, perquisites and money received by the banking department or any salaried officer or employe thereof, from any source whatever, on account of services rendered by the department, or by any such officer or employe in an official capacity. The commissioner shall annually, on or before the close of the fiscal year pay into the state treasury, for the credit of the state banking department fund, such interest as shall have accrued upon the balances held by him as trustee for the owners of unclaimed deposits, dividends or interest. (Laws 1915, p. 108.)

Sec. 11684. Prohibition of banking business.—No corporation, domestic or foreign, other than a corporation formed under and subject to the banking laws of this state or of the United States, except as permitted by such laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidence of debt, of receiving deposits, of buying and selling bills of exchange, of issuing bills, notes or other evidences of debt for circulation of money, or of engaging in any other form of banking; nor shall any such corporation, except an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph or telephone company, possess the power of receiving money for transmission or of transmitting the same, by draft, traveler's check, money order or otherwise. (Laws 1915, p. 108.)

Sec. 11685. Licenses to foreign corporations—renewal.—Upon receipt by the commissioner from any foreign corporation of an application in proper form for leave to do business in this state under the provisions of this chapter, he shall, by such investigation as he may deem necessary, satisfy himself whether the applicant may safely be permitted to do business in this state. If from such investigation he shall be satisfied that it is safe and expedient to grant such an application and it shall have been shown to his satisfaction that such applicant may be authorized to engage in business in this state pursuant to the provisions of

this chapter and has complied with all the requirements of this chapter, he shall issue a license under his hand and official seal authorizing such applicant to carry on such business at the place designated in the license and, if such license is for a limited time, specifying the date upon which it shall expire. Such license shall be executed in triplicate and the commissioner shall transmit one copy to the applicant, file another in his own office and the third in the office of the recorder of the county or city in which is located the place designated in such license. Whenever any such license is issued for one year or less, the commissioner may, at the expiration thereof, renew such license for one year. (Laws 1915, p. 108.)

Sec. 11686. Commissioner as attorney to accept service of process.—Whenever pursuant to any provision of this chapter the commissioner shall have been duly appointed attorney to receive service of process for any foreign corporation, he shall forthwith forward by mail, postage prepaid, a copy of every process served upon him directed to the president or secretary of such corporation, at its last known postoffice address. For each copy of process the commissioner shall collect the sum of two dollars which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his taxable disbursements if he succeeds in his suit or proceeding. The term process, when used in this section, include any writ, summons, petition or order whereby any suit, action or proceeding shall be commenced. (Laws 1915, p. 109.)

Sec. 11687. Revocation of authorization certificate or license in certain cases.—If at any time the commissioner shall be satisfied that any private banker or foreign corporation to which has been issued an authorization certificate or license, is violating any of the provisions of this chapter, or is conducting its business in an unauthorized or unsafe manner, or is in an unsound or unsafe condition to transact its business, or cannot with safety and expediency continue business, the commissioner may, over his official signature and seal of office notify the holder of such authorization certificate or license that the same is revoked. Such notice shall be executed in triplicate and the commissioner shall forthwith transmit one copy to the holder of such authorization certificate or license, file another in his own office and file the third in the office of the recorder of the county or city in which such authorization certificate or license has been filed. The commissioner may, in his discretion, publish a copy of such notice, with such other facts as he may deem proper, for six successive days, in a paper published at the City of Jefferson. (Laws 1915, p. 109.)

Sec. 11688. Assessments, penalties and forfeitures entitled to priority.—In case of the insolvency or voluntary or involuntary liquidation of any corporation or private banker to which this chapter is applicable, all unpaid charges lawfully assessed against it by the commissioner and all unpaid penalties and forfeitures incurred by it under any section of this chapter shall be entitled to priority of payment from the assets of such corporation, or banker on an equality with any other priority given by this chapter. (Laws 1915, p. 109.)

Sec. 11689. Institutions to be examined yearly—fees.—It shall be the duty of the bank commissioner, at least once in each and every year, either personally or by a deputy, or one or more of the examiners appointed by him, to visit and examine every bank and trust company organized and doing business under the laws of this state, and also every private banker who is by law required to report to him; and he shall also in like manner visit and examine at least once in each year every other corporation which is by law required to report to him. The bank commissioner, or the deputy or examiners designated by him for that purpose, shall also have power in like manner to examine any such bank, savings and safe deposit institution, trust company, private banker or other such corporation whenever, in his judgment, it may be deemed necessary or expedient, and shall have power in like manner to examine every agency located in this state of any foreign banking corporation, for the purpose of ascertaining whether it has violated any law of this state, and for such other purposes and as to such other matters as the commissioner may prescribe. He and they shall have power to administer oaths to any persons whose testimony may be required in such examination or investigation of any such corporation, banker or agency, and to compel the appearance and attendance of any such person for the purpose of any such examination or investigation. On every such examination inquiry shall be made as to the condition and resources of such corporation or banker, the mode of conducting and managing its affairs, the actions of its directors or trustees if a corporation, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in the administration of its affairs; and as to such other matters as the commissioner may prescribe. The commissioner may also make such special investigations as he shall deem necessary to determine whether any individual or corporation has violated any of the provisions of this chapter. Such examination may be made and such inquiry instituted or continued in the discretion

of the commissioner after he has taken possession of the property and business of any such corporation or banker, until it shall resume business or its affairs shall be finally liquidated in accordance with the provisions of this article. The expense of every annual or special examination shall be paid by the bank, private banker, savings and safe deposit institution, trust company or such other corporation examined in such amount as the bank commissioner shall certify to be just and reasonable, and for the purpose of this section such institutions are hereby denominated banks: *Provided*, such expense shall be paid in proportion to the capital of such bank and shall not exceed the following amounts: Banks with a capital of two thousand five hundred dollars, or less, fifteen dollars; banks with a capital of more than twelve thousand five hundred dollars and not exceeding twenty-five thousand dollars, twenty dollars; banks with a capital of more than twenty-five thousand dollars and not exceeding fifty thousand dollars, twenty-five dollars; banks with a capital of more than fifty thousand dollars and not exceeding one hundred thousand dollars, thirty-five dollars; banks with a capital of more than one hundred thousand dollars and not exceeding one hundred and fifty thousand dollars, fifty dollars; banks with a capital of more than one hundred and fifty thousand dollars and not exceeding two hundred and fifty thousand dollars, seventy-five dollars; banks with a capital of more than two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars, one hundred and fifty dollars; banks with a capital of more than five hundred thousand dollars and not exceeding one million dollars, two hundred and fifty dollars; banks with a capital of more than one million dollars and not exceeding two million dollars, four hundred dollars; banks with a capital of more than two million dollars and not exceeding four million dollars, six hundred and fifty dollars; banks with a capital exceeding four million dollars, nine hundred dollars. Surplus fund shall be reckoned in estimating these fees the same as capital stock, the aggregate sum collected from the banks, private bankers, savings and safe deposit institutions, trust companies and other corporations being reckoned upon a basis sufficient to cover the entire expenses of the department of banking, including salaries of officers and employes, traveling expenses of the bank commissioner, his deputy and examiners and the preparation of the reports and all other expenses made necessary by this act. Any special expenses incurred and services performed on account of any such corporation or banker or on account of any foreign corporation or its agency to which this chapter is applicable, outside of the expense of an annual or special examination shall be charged to and paid by the corporation.

ion or banker for whom they were incurred or performed. The sums collected from banks, private bankers, savings and safe deposit institutions, trust companies and other corporations or agencies for the purposes of this act shall be paid directly into the state treasury by the bank commissioner and credited to the state banking department fund, which is hereby continued. All payments for salary to the bank commissioner, deputy commissioners, examiners, employes and agents, and for other expenses under this act, shall be made upon the certificate of the bank commissioner, by warrant of the state auditor upon the state treasurer. The result of each examination of a bank shall be certified by the examiner upon the records of the corporation or private bank examined and the result of all examinations during the biennial period shall be embodied in a report to be made by the bank commissioner to the legislature. (Laws 915, p. 110.)

Sec. 11690. Reports from corporations and bankers.—It shall be the duty of the commissioner to require all corporations to which this chapter is applicable and all private bankers to make to him the regular periodical reports of their condition prescribed by this chapter and he shall prescribe the form and contents of all such reports. In addition to such regular reports he may require any such corporation or banker to make special reports to him at such times and in such form as he may prescribe, and may direct that such special reports be verified and prescribe the form of the verification. He shall at least three times in each year, designate some day therein in respect to which every such bank, trust company and every private banker shall report to him, and he shall serve a notice designating such day. Such notice may be served by delivering the same to such private banker or, in the case of a corporation, by delivering the same at its place of business to some officer therein, or it may be served in any case by depositing it in the postoffice in a postpaid wrapper directed to such corporation or banker at its or his principal place of business; and the bank commissioner shall give no notice to any person whomsoever of the day on which he will call for such a statement. For a violation of this prohibition, or of any other duty herein imposed upon him, he shall be deemed to have committed a misdemeanor in office, and upon conviction of the same, upon indictment or information of any parties in the name of the state, before a competent tribunal, he shall be punished by removal from office, and by a fine of not less than five hundred dollars for each violation of this law. (Laws 1915, p. 111.)

Bookkeeper or assistant cashier of bank and bondsmen, whose act was not *willful*, *held*, not liable on his bond for peculations of cashier and other officers of bank, in view of this section and others cited. *Citizens Trust Co. v. Ferguson*,

195 A. 330, 190 S. W. 395. The penalties prescribed by this section are exclusive in their nature and bar an action of deceased for making false statement. *Union v. Hill*, 155 Mo. 232, 55 S. W. 1091.

Sec. 11691. Unclaimed deposits, dividends and interest—deposit by commissioner in trust—preference.—The commissioner may take and hold as trustee for the owners thereof any sums which remain due to and unclaimed by any creditor, depositor, stockholder or shareholder of any corporation or private banker, to which this chapter is applicable, after the completion of the voluntary or involuntary liquidation of the business and affairs of such corporation or banker. Whenever such sums are received by the commissioner and he is not in possession of the business and affairs of such corporation or banker, he shall give his receipt for such moneys and shall forthwith deposit them in one or more solvent state banks, trust companies or savings banks, to the credit of the bank commissioner in trust for the persons entitled thereto. At the completion of a liquidation by the commissioner or any receiver, he shall in like manner deposit such moneys at the expiration of six months after the order for final distribution. All such deposits by the commissioner shall be entitled to priority of payment in case of the insolvent or voluntary or involuntary liquidation of the depository on an equality with any other priority given by this chapter. (Laws 1915, p. 112.)

Sec. 11692. Commissioner must publish list of unclaimed deposits, dividends and interest every five years.—On the second Wednesday in January; nineteen hundred and sixteen, and on the second Wednesday in January in each fifth year thereafter the commissioner shall cause to be published in a paper in the City of Jefferson in which notices by state officers are required by law to be published, and in at least one daily newspaper published in each city of the first class within the state, a list containing the names of the banks, trust companies and private bankers and savings banks which, according to their last reports to him, held unclaimed deposits, dividends or interest, and the names of the liquidated corporations and private bankers for the benefit of whose unlocated depositors, creditors, stockholders or shareholders, the commissioner holds deposits, dividends or interest as trustee, together with the full names of the persons entitled to receive such unclaimed deposits, dividends or interest from the commissioner. (Laws 1915, p. 112.)

Sec. 11693. Index of persons entitled to unclaimed sums—payment to persons entitled.—The commissioner shall keep in his office an index of the names of all persons for whom he holds in trust any unclaimed deposits, dividends or interest and of the names of all persons reported to him by any corporation or pri

banker as entitled to any such unclaimed deposits, dividends or interest held by such corporation or banker. Whenever any person shall show by evidence satisfactory to the commissioner that he is lawfully entitled to receive any such money the commissioner shall indicate to him the corporation or banker by which it is held, or, if the commissioner holds such money in trust, he may pay it over to such person. In cases of doubtful or conflicting claims, he may require of the claimant an order of a circuit court authorizing and directing the payment thereof, for any payment made by him in good faith, by check or otherwise payable to the creditor, depositor, stockholder or shareholder appearing from the records in his office to be entitled thereto, he shall be held harmless and shall not be liable to any subsequent claimant. (Laws 1915, p. 113.)

Sec. 11694. Approval of commissioner—filing.—In any case in which this chapter makes the approval of the commissioner a condition precedent to the doing of any act, unless otherwise provided by law, it shall lie within his sound discretion to grant or refuse his approval. Such approval, if granted, shall be in writing and a copy thereof shall be filed in the office of the commissioner. (Laws 1915, p. 113.)

Sec. 11695. Extensions of time by commissioner.—For any satisfactory cause to him shown, the commissioner may grant extensions of time to corporations or private bankers to which this chapter is applicable, as follows:

1. He may extend for not more than one year the time within which any such corporation may commence business. Each extension shall only be made by an order under his hand and official seal which shall be executed in triplicate and one copy thereof shall be filed in the commissioner's office, one in the office of the recorder of the county or city in which the articles of agreement of such corporation have been filed, and the third shall be transmitted to such corporation.

2. He may extend for not exceeding ten days in the case of a bank, trust company or private banker, and for not exceeding thirty days in the case of any other corporation to which this chapter is applicable, the time within which any such corporation or banker is required to make and file any report to the commissioner.

3. In all other cases where, by any provision of this chapter, there is given power to grant extensions of time, it shall be within his sound discretion to grant such extension, which shall be in writing, and a copy thereof shall be filed in the office of the commissioner. (Laws 1915, p. 113.)

Sec. 11696. Branch offices—approval or refusal—certificate.—Upon receipt by the commissioner of a written application

for leave to open a branch office from a corporation authorized by this chapter to open branch offices, he shall make such investigation as he may deem necessary to ascertain whether the public convenience and advantage will be promoted by the opening of such branch office and whether such corporation has the amount of actually paid in capital required by this chapter. If satisfied that the granting of such application is expedient and desirable, he shall make a certificate in triplicate under his hand and official seal authorizing the opening and occupation of such branch office and specifying the date on or after which and the condition under which it may be opened and the place where it shall be located, and shall file one triplicate in his own office, one in the office of the recorder of the county or city wherein the principal place of business of such corporation is located, and shall transmit the other to such applicant. If the commissioner shall be satisfied that the opening of such branch office is not desirable or inexpedient or that such corporation has not the requisite amount of capital actually paid in, he shall refuse such application and notify such corporation of his determination. *Provided*, that this section shall not be construed to empower the commissioner to grant a certificate for any bank or trust company organized under the laws of this state to maintain in this state any branch bank or branch trust company. (Laws 1915, p. 114.)

Sec. 11697. Proceedings in name of commissioner for violations of the provisions of this chapter.—If any corporation, private banker, subject to the provisions of this chapter, shall refuse or fail, after due notice to pay any assessment lawfully imposed upon it or him by the commissioner; or if any such corporation or banker, or any officer, director, trustee, agent or employee of any such corporation or banker shall refuse or fail, after due notice, to pay any penalty or forfeiture incurred under any provision of this chapter by such corporation, banker, officer, director, trustee, agent or employee, or if any other corporation or person shall violate any of the provisions contained in this chapter, the commissioner may in his discretion report the facts to the attorney-general, who shall thereupon, in the name of the state at the relation and to the use of the bank commissioner, institute such action or proceeding as the facts may warrant against such person, corporation, banker, officer, director, trustee, agent or employee. (Laws 1915, p. 114.)

Sec. 11698. Orders of commissioner.—(1) Whenever the bank commissioner shall have reason to believe that the capital stock of any corporation or private banker subject to the provisions of this chapter is reduced by impairment or otherwise below the amount required by law, or by its certificates or articles

of association, he shall issue an order that such corporation or private banker make good the deficiency forthwith or within a time specified in such order.

(2) Whenever it shall appear to the commissioner, from any examination made by him or his examiners, that any corporation or private banker subject to the provisions of this chapter, or any foreign corporation licensed by the commissioner to do business under this chapter, has violated its charter or any law, or is conducting its business in an unsafe or unauthorized manner, the commissioner shall, by an order direct the discontinuance of such illegal and unsafe or unauthorized practices, and strict conformity with the requirements of the law, and that it proceed with safety and security in its transactions, and he may order the delinquent to appear before him, at a time and place fixed in said order, to present any explanation in defense of the practices directed in said order to be discontinued.

(3) Whenever it shall appear to the commissioner that either the total reserves or reserves on hand of any such corporation or private banker required by this chapter to maintain such reserves are below the amount required by law to be maintained or that such corporation or banker is not keeping its or his reserves on hand as required by this chapter, he may issue an order directing that such corporation or banker make good such reserves forthwith or within a time specified in such order, or that it keep its reserves on hand as required by this chapter.

(4) Whenever it shall appear to the commissioner that any corporation or private banker subject to the provisions of this chapter, does not keep its or his books and accounts in such manner as to enable him readily to ascertain its or his true condition, he may issue an order requiring such corporation or banker, or the officers thereof or any of them, to open and keep such books of account as he may, in his discretion, determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such corporation or banker; and if wrong entries or unlawful uses of the funds of the corporation or private banker have been made, the commissioner shall order that such entries shall be corrected, and such sums unlawfully paid out shall be restored by the person or persons responsible for the wrongful or illegal payment thereof.

If any corporation or person, shall fail or refuse to comply with any such duly issued order provided for in this section, it or he shall forfeit to the state the sum of one hundred dollars for every day it or he so fails or refuses, after it or he receives notice of such order: *Provided*, that in addition to the said penalty the commissioner may in his discretion report the delinquency to the attorney-general, with request that he proceed as provided in

the next section, and in the event of such request, the attorney-general shall so proceed. (Laws 1915, p. 114.)

Appeal from order vacating appointment of receiver of private bank will not be dismissed on ground that order appointing receiver entered after petition in bankruptcy against bank of owner was not within authority of circuit court. *State ex rel. Barker v. Sage*, 267 Mo. 493, 184 S. W. 984. The appointment of a receiver without notice to creditors on the ex parte application of an insolvent corporation is void. *Jones v. Schaff Bros. Co.*, 187 A. 597, 174 S. W. 177. As to errors which do not authorize the placing of a bank in the hands of a receiver, see *State ex rel. v. Bank*, 197 Mo. 574, 94 S. W. 953. Remedy of winding up affairs of banks, to the exclusion of other proceedings, held valid and constitutional. *Koch v. Mo. Lincoln Trust Co.*, 181 S. W. 44.

Sec. 11699. Report to attorney-general and action by him in certain cases.—If any director or officer or employe of any corporation or private banker subject to the provisions of this chapter has abused his trust or been guilty of misconduct or malversation in his official position or employment injurious to the institution, the commissioner may, in his discretion, communicate the facts to the attorney-general, who shall thereupon institute such proceedings as the nature of the case may require. Such proceedings may be for an order for the removal of one or more of the officers or members of the board of directors, or for any other remedy suggested by the conditions discovered to the court; and the court, or judge thereof in vacation, before whom such proceedings shall be instituted, shall have power forthwith to grant such orders, and in its or his discretion, from time to time, to modify or revoke the same and to grant such relief as the evidence, situation of the parties and the interest involved shall seem to require. (Laws 1915, p. 116.)

See notes to preceding section.

Sec. 11700. When commissioner may take possession of corporation or private banker.—The bank commissioner may forthwith take possession of the business and property of any corporation or private banker, subject to the provisions of this chapter:

(1) Whenever such corporation or private banker has refused, upon proper demand, to submit its or his records and affairs for inspection to the commissioner, one of his deputies, or an examiner of the banking department, or

(2) Whenever from an examination made by the commissioner, or by one of his deputies or examiners, it shall be discovered that any such corporation or private banker is insolvent, or that its or his continuance in business will seriously jeopardize the safety of its or his depositors or other indebtedness, and if the action is taken from an examination by an examiner and such examiner shall recommend the closing of the corporation or private banker, then it shall be the duty of the bank commissioner, if he approve such recommendation, by himself or one of his

iners, immediately to close said corporation or private bank, take charge of all the property and effects thereof.

(3) Whenever any corporation or private banker subject to the provisions of this chapter so desires, it or he may place its affairs and assets under the control of the bank commissioner by posting a notice on its front door as follows: "This (or trust company) is in the hands of the bank commissioner." The posting of this notice or of a notice by the bank commissioner that he has taken possession of any such corporation or private bank shall be sufficient to place all its assets and property, of whatever nature, in the possession of the bank commissioner, and shall operate as a bar to any proceedings whatsoever in law or in equity, against any incorporated bank, private bank, or trust company, or its or their assets, and if any action is begun, then all such proceedings shall be summarily dismissed and for naught held, upon the certificate of the bank commissioner being filed in such cause, showing that he has taken possession of the assets of such bank, banker, or trust company, and any court in which such proceedings are pending shall have no power, authority or jurisdiction to proceed further in any such cause, and any officer or other person having possession of any assets or property of any such bank, banker, or trust company, shall immediately deliver the possession of the same to the commissioner unless otherwise provided in this act: *provided, however, nothing herein shall in anywise prevent or prohibit any bank, banker or trust company from being wound up in any case.* (Laws 1915, p. 116.)

See notes to preceding section.

Sec. 11701. Banks, trust companies, etc., prohibited from making assignment—duty when in failing condition.—It shall be lawful in this state for any corporation or private banker subject to the provisions of this chapter to make a voluntary general assignment of its business and affairs. In case it shall find itself to be in a failing condition, it shall immediately place itself in the hands of the bank commissioner. Any deed of voluntary general assignment executed by any such corporation or private banker, shall be null and void, and in case the officers or directors of any such institution shall endeavor to make any voluntary general assignment of its assets, the bank commissioner shall immediately take possession thereof and proceed, as provided in section 11702 and following. All transfers of the notes, bonds, bills of exchange, or other evidence of debt owing to any corporation or private banker, or of deposits to its credit; all assignments of mortgages, securities on real estate or of judgments or decrees in its favor; all deposits of money, bullion or other valuable thing

for its use, or for the use of any of its shareholders or creditors and all payments of money to it, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, shall be utterly null and void. No attachment, injunction or execution shall be issued against such corporation or private banker, or its property, before final judgment in any suit, action or proceeding in any state, county or municipal court. (Laws 1915, p. 117.)

This section indicates a legislative purpose to prohibit insolvent banks from liquidating their business under the general law authorizing voluntary assignment for the benefit of creditors, but does not prohibit creditors and stockholders and others interested in its funds from making an assignment of its assets to a trust company for collection and distribution to liquidate its affairs and retire it from business. *Citizens Trust Co. v. Tindle et al.*, 272 Mo. 681, 199 S. W. 1025.

Sec. 11702. Circumstances under which possession of commissioner may terminate.—When the commissioner shall have duly taken possession of such corporation or private banker under any provision of this chapter, he may hold such possession until its affairs are finally liquidated by him, unless:

1. He shall have permitted such corporation or banker to resume business pursuant to the provisions of section 11705.

2. The commissioner shall have been directed by order of court to surrender such possession, pursuant to the provisions of section 11704.

3. The stockholders of such corporation, at a meeting called by the commissioner pursuant to the provisions of section 11723, shall have duly determined to appoint and shall have appointed, an agent or agents to continue the liquidation of such corporation, and such agent or agents shall have qualified to take possession of its remaining assets as provided in section 11723.

4. The depositors and other creditors of such corporation or banker and the expenses of such liquidation shall have been paid in full. (Laws 1915, p. 117.)

Sec. 11703. Commissioner may report delinquencies to attorney-general to procure judgment of dissolution—reports presumptive evidence.—Whenever the commissioner is entitled to take possession of any such corporation for any reason set forth in section 11700, he may report to the attorney-general and specify in such report the delinquencies of such corporation; and the attorney-general may institute an action to procure a judgment dissolving such corporation. Every such report and every report of a duly instituted examination of such corporation, when duly verified by the certificate and seal of the bank commissioner, shall be a presumptive evidence of the facts therein

stated in any action or proceeding against such corporation instituted by the attorney-general. (Laws 1915, p. 118.)

Sec. 11704. Manner and time within which action of commissioner in taking possession may be tested.—At any time within ten days after the commissioner has taken possession of the property and business of any such corporation or banker, such corporation or banker may apply to the circuit court, or the judge thereof in vacation, in the judicial district in which the principal office of such corporation or banker is located, for an order requiring the commissioner to show cause why he should not be enjoined from continuing such possession. The court or the judge thereof in vacation, may, upon good cause shown, direct the commissioner to refrain from further proceedings and to surrender such possession. (Laws 1915, p. 118.)

Sec. 11705. Commissioner may permit resumption of business.—The commissioner may, upon such conditions as may be approved by him, surrender possession for the purpose of permitting such corporation or banker to resume business. (Laws 1915, p. 118.)

Sec. 11706. Special deputies, assistants, counsel and other employees.—The commissioner may, by certificate, under his hand and official seal, appoint one or more special deputy commissioners as agent or agents to assist him in liquidating the business and affairs of any corporation or private banker in his possession. The commissioner shall file such certificate in his office and shall cause a certified copy thereof to be filed in the office of the recorder of the county or city in which the principal office of such corporation or banker is located. He may, from time to time, delegate such special deputy commissioner to perform such duties connected with such liquidation as he may deem proper. He may employ such expert assistants and counsel and may retain such of the officers or employees of such corporation or banker as he may deem necessary in the liquidation and distribution of the assets of such corporation or banker. He shall require such security as he may deem proper from his agents and assistants appointed pursuant to the provisions of this section. (Laws 1915, p. 118.)

Sec. 11707. Payment by commissioner of expenses of liquidation.—The commissioner shall pay out of the funds in his hands, of such corporation or private banker all expenses of liquidation, subject to the approval of the circuit court in the county or city in which the principal office of such corporation or banker is located, and upon notice of the application for such approval to such corporation or banker. He shall, in like manner, fix and pay the compensation of special deputy commis-

sioners, assistants, counsel and other employes appointed to assist him in such liquidation pursuant to the provisions of this article. But a special deputy who, as examiner acting under commission from the commissioner, has previously examined the books, papers and affairs of such corporation or banker, shall not receive compensation as such special deputy which exceeds by more than five dollars a day the per diem compensation received by him as examiner at the time of making such examination. (Laws 1915, p. 119.)

Sec. 11708. Procedure of commissioner to obtain possession of pleadings, et cetera, in actions against which attorney's liens are asserted.—When the commissioner is in possession of the business and property of any such corporation or private banker, and attorney's liens are asserted by attorneys of such corporation or banker against any causes of action to which such corporation or banker is a party, or against pleadings or other papers in the possession of such attorneys relating to such causes of action, or if such liens are asserted against any evidences of title to any assets or against any of the assets of such corporation or banker, then in the possession of such attorneys, the commissioner may institute special proceedings and petition the court to fix and determine the amount of said liens. Such proceedings shall be instituted in the county or city in which the principal office of such corporation or banker is located. Upon application of the commissioner and upon notice to such attorneys to be prescribed by the court, the court may by order prior to final order in such proceeding direct such attorneys to deliver to the commissioner all property of such corporation or banker, against which such liens are asserted, together with such consents to the substitution of attorneys as the court may direct, upon the commissioner furnishing security to such attorneys in the manner and to an amount to be fixed by the court. (Laws 1915, p. 119.)

Sec. 11709. On taking possession, commissioner shall notify those holding assets—effect of notification.—When the commissioner shall have taken possession of the property and business of any such corporation or private banker, he shall forthwith give notice of such fact to any and all banks, trust companies, associations and individuals holding any assets of such corporation or banker. No corporation, association or individual having notice or knowledge that the commissioner has taken possession of such corporation or banker, shall have a lien or charge against any of the assets of such corporation or banker for any payment in advance or clearance thereafter made, or liability thereafter incurred. (Laws 1915, p. 119.)

Sec. 11710. Inventory of assets and where filed.—After the commissioner shall have taken possession of the property and business of such corporation or private banker, he shall make in duplicate an inventory of the assets of such corporation or banker. When the commissioner shall have decided that he will not permit the corporation or banker to resume business pursuant to the provisions of section 11705; he shall file one copy of such inventory in his office and shall cause one copy to be filed in the office of the recorder of the county or city in which the principal office of such corporation or banker is located. (Laws 1915, p. 120.)

Sec. 11711. Disposition by commissioner of property held by delinquent as bailee, or depositary for hire.—The commissioner may, after he has taken possession of any such corporation or private banker, cause to be mailed to all persons claiming to be, or appearing upon the books of such corporation or banker to be, the owner or owners of any personal property theretofore left in the possession of such corporation or banker as bailee or depositary for hire, or the lessee of any safe, vault or box, a notice in writing in a securely closed, postpaid, registered letter directed to each of such persons at his postoffice address as recorded upon its books, or, if his name is not recorded in said books, at his last known postoffice address, notifying such person to remove all such personal property within a period stated in said notice, and not less than sixty days from the date thereof. If such property shall not have been removed within the time fixed by such notice, the commissioner may apply to the circuit court or judge thereof in vacation of the county or city in which such property is located for an order directing him as to the disposition of such property; and he may cause any safe, vault or box held by, or on the premises of, such corporation or banker to be hereafter opened in his presence or in the presence of one of the special deputy commissioners, and of a notary public, not an officer or in the employ of the corporation or banker or of the commissioner, and the contents, if any, to be sealed and distinctly marked by such notary public, with the name and address of the person in whose name such safe, vault or box stands upon the books of the corporation or banker, and a list and description of the property therein to be attached thereto. Such package so sealed and addressed together with the list and description of the property therein, may be kept by the commissioner in one of the general safes or boxes of the corporation or banker until delivered to the person whose name appears thereon or until otherwise disposed of as directed by the court. (Laws 1915, p. 120.)

Sec. 11712. Effect of commissioner's notice to remove upon contract of bailment or of deposit for hire.—After the commis-

sioner shall have duly mailed a notice in writing, as provided in the foregoing section 11711, the contract of bailment or of deposit for hire, or lease of safe, vault or box, if any between such person duly notified and the corporation or private banker shall cease and determine upon the date for removal fixed in such notice, and the amount of the unearned rent or charges, if any, payable by such person shall become a debt of the corporation or banker to said person. (Laws 1915, p. 121.)

Sec. 11713. Liquidation and conservation of assets—compounding debts and compromising certain claims.—The commissioner is authorized, upon taking possession of the property and business of such corporation or private banker, to liquidate its affairs thereof and to do all acts and to make such expenditures as in his judgment are necessary to conserve its assets, and business. He shall proceed to collect the debts due. He may upon an order of the circuit court, sell or compound all bad or doubtful debts held by, and compromise claims against such corporation or banker, other than deposit claims, and, upon such terms as the court shall direct, may sell or otherwise dispose of all or any part of the real and personal property of such corporation or banker. In case any of the real property so sold is located in a county or city other than the county or city in which the application to the court for leave to sell the same is made, the commissioner shall cause a certified copy of said order and the application therefor to be filed in the office of the recorder of the county or city in which such real property is located. (Laws 1915, p. 121.)

Sec. 11714. Deposit of moneys collected—preference.—The moneys collected by the commissioner shall be from time to time deposited in one or more state banks, savings banks or trust companies and, in case of the insolvency or voluntary or involuntary liquidation of the depository, such deposits shall be entitled to priority of payment on an equality with any other priority given by this chapter. (Laws 1915, p. 121.)

Sec. 11715. Commissioner's power to sue, execute instruments, et cetera, for delinquents—actions and proceedings preferred—exemption from filing fees.—For the purpose of executing any of the powers and performing any of the duties hereby conferred upon him, the commissioner may, in the name of the delinquent corporation or private banker, prosecute and defend any and all actions and legal proceedings. Any such action or proceeding, upon application of the commissioner, shall be entitled to the same preference to which an action or proceeding by or against a receiver appointed by the court is entitled in any court of the state. He may, in the name of the delinquent corporation or banker, execute, acknowledge and deliver any and all

deeds, assignments, bills of sale, releases, extensions, satisfactions and other instruments necessary and proper to effectuate any sale, lease or transfer of real or personal property or to carry into effect any power conferred or duty imposed upon him by this article or by order of the circuit court. Any instrument executed pursuant to the authority hereby given shall be as valid and effectual, for all purposes as though the same had been executed by the officers of the delinquent corporation by authority of its board of directors, or by the private banker personally. (Laws 1915, p. 121.)

Sec. 11716. Notice to creditors to make proof of claims.—

When the commissioner shall have taken possession of such corporation or private banker, and shall have determined to liquidate its affairs he shall notify all persons who may have claims against such corporations or banker to present the same to him and make proper proof thereof within four months from the date of said notice and at a place specified therein, and shall specify in said notice the last date for presenting said proofs. He shall cause said notice to be mailed to all persons whose names appear as creditors upon the books of the corporation or banker. He shall also cause said notice to be inserted weekly in such newspapers as he may direct for three consecutive months, the first insertion thereof to be published more than ninety days before the last day fixed in said notice for presenting proof of claims. After the date specified in such notice as the last date for presenting proofs of claims the commissioner shall have no power to accept any claim. (Laws 1915, p. 122.)

Sec. 11717. Commissioner to list claims duly presented—when and where filed.—The commissioner shall make in duplicate a complete list of all claims duly presented, and shall specify therein the name of the claimant, the nature of the claim, and the amount thereof. Within ten days after the last date fixed in said notice to creditors to present and make proof of claims, the commissioner shall file one copy of said list in his office, and cause one copy to be filed in the office of the recorder of the county or city in which the principal office of such corporation or private banker is located. (Laws 1915, p. 122.)

Sec. 11718. Objections to claims presented may be filed with commissioner within certain time—procedure upon claim under objection.—Within thirty days after the last date fixed in said notice to creditors to present and make proof of claims, objections to any claim duly presented may be made by any party interested, by filing with the commissioner such objections in writing, signed by the objector and duly verified. Unless the commissioner rejects any claim to which objections have been

duly filed with him, he shall, within thirty days after the time to file such objections has expired, apply to the circuit court or judge thereof in vacation, upon notice to the objector for an order directing the commissioner as to the disposition of said claim. The court or judge thereof in vacation, may thereupon dispose of said objections or may order a reference for that purpose. (Laws 1915, p. 122.)

Sec. 11719. Commissioner may accept or reject claims—list of claims accepted to be filed.—The commissioner shall, not later than thirty days after the time has expired to file objections to claims duly presented, approve or reject every duly filed claim except claims as to which objections are still pending undetermined by the court or judge. Every claim approved by him, he shall endorse "approved" and file so endorsed in his office. If he doubts the justice or validity of any claim, he shall reject such claim and shall endorse the same "rejected" and file said claim so endorsed in his office. He shall cause notice of such rejection to be served upon the claimant either personally or by mail. The commissioner shall not determine priorities in approving or rejecting claims; but approved claims shall be presented to the circuit court pursuant to section 11722 for determination as to their priority of payment. Within thirty days after the commissioner has approved or rejected all claims duly filed, he shall list all claims approved and all rejected by him and file one copy of said list in his office and one copy in the office of the recorder of the county or city in which the principal office of such corporation or private banker is located. (Laws 1915, p. 123.)

Sec. 11720. Effect of accepting claims—statute of limitations for action upon claims not accepted—necessary allegations.—When the commissioner has approved a duly filed claim and has filed the same endorsed "approved" in his office, the claimant, unless such claim is entitled by law to priority of payment, shall be entitled to share ratably with other general creditors in the distribution of the assets of such corporation or private banker as such assets are distributed pursuant to section 11722. When the time within which the commissioner is required to approve or reject claims has expired and at any time within six months thereafter, a claimant whose claim has been duly filed and has not been approved by the commissioner may institute and maintain an action thereon against such corporation or banker. No action shall be maintained against such corporation or banker while the commissioner is in possession of its affairs and business unless brought within the period of limitation specified in this section. In all actions or proceedings instituted against such

corporation or banker while the commissioner is in possession of its property and business, the plaintiff shall be required to allege and prove that the claim upon which the action is instituted was duly filed and that sixty days have elapsed since the expiration of time for filing said claims and that said claim has not been approved. (Laws 1915, p. 123.)

Sec. 11721. Judgments recovered after commissioner takes possession shall not be liens.—A lien shall not attach to any of the property or assets of such corporation or private banker by reason of the entry of any judgment recovered against such corporation or banker after the commissioner has taken possession of its property and business and so long as such possession continues. (Laws 1915, p. 123.)

Sec. 11722. Dividends to creditors—priorities—disposition of unclaimed dividends.—At any time after the date fixed by the commissioner for the presentation of claims, the circuit court may by order authorize the commissioner upon his application to declare out of the funds remaining in his hands after the payment of expenses, one or more dividends. Such order shall specify what claims, if any, are entitled to priority of payment, and shall direct the commissioner regarding the manner of payment of such prior claims. At any time after the expiration of eight months from said date fixed for the presentation of such claims, he may by like order declare a final dividend. Such dividends shall be paid to such persons, in such amounts, and upon such notice, as the circuit court in the county or city in which the principal office of such corporation or private banker is located, may by order direct. Dividends remaining unclaimed or unpaid in the hands of the commissioner for six months after the order for final distribution, shall be deposited by him as provided in section 11691. (Laws 1915, p. 124.)

Sec. 11723.. Commissioner shall call stockholders meeting after creditors are paid in full—proceedings at such meeting.—Whenever the commissioner shall have paid to each creditor of any stock corporation whose claim has been duly proved the full amount of such claim, and shall have made proper provision for claims in litigation and not finally determined, and shall have paid all the expenses of liquidation, he shall call a meeting of the stockholders of such corporation by causing notice of the time and place of such meeting to be published at least once a week for three successive weeks in one or more newspapers selected by him and published in the county or city where the principal office of such corporation is located. At such meeting, the stockholders shall determine whether the commissioner shall continue as liquidator to wind up the affairs of such corporation, or whether

the stockholders themselves shall elect an agent or agents for that purpose. In determining these matters, the stockholders shall vote by ballot in person or by proxy. Each share of stock shall be entitled to one vote and the vote of a majority of the issued stock shall be necessary to a determination. In case it is determined to continue the liquidation under the commission, he shall continue the liquidation of the affairs of such corporation and after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock and in such manner and upon such notice as may be directed by order of the circuit court. Upon a petition by the commissioner showing that all the assets of such corporation have been duly distributed and that unclaimed sums have been duly deposited by him as provided in section 11723, and that more than one year has elapsed since the last required publication of notice to creditors to present their claims, and upon such notice as the court may prescribe, the circuit court may, on such terms as justice requires, make an order confirming such disposition of such unclaimed sums and declaring such corporation dissolved and the corporate existence thereof terminated. Upon the filing of a certified copy of such order in the office of the commissioner, the existence of such corporation shall cease and determine. In case the stockholders shall determine to appoint an agent or agents to continue such liquidation, they shall thereupon select by ballot such agent or agents. A majority of the stock present and voting in person or by proxy shall be necessary to determine such question. If such agents are elected, agents shall be duly elected by the stockholders, the commissioner may require such agent or agents to execute and deliver to him a bond to the state, in such amount, with such sureties, and in such form as shall be approved by him, conditioned upon the performance of all the duties of his or their trust; and thereupon the commissioner shall transfer and deliver to such agent or agents all the assets of such corporation then remaining in his hands. Upon such transfer and delivery, the commissioner shall be discharged from any and all further liability to such corporation and its creditors. Upon the transfer and delivery of said assets by the commissioner, he shall file a certified copy of the proceedings of said meeting in his office and cause a certified copy to be filed in the office of the recorder of the county or counties in which the principal office of such corporation was located. No powers specially set out in its articles of association shall be exercised by such corporation after the commissioner has filed such certified copy in his office. (Laws 1915, p. 124.)

Sec. 11724. Commissioner may maintain action against directors, trustees, managers or officers for violation of their

icial duties.—At any time while the commissioner is in possession of the property and business of any such corporation, he may within six years after the cause of action has accrued institute and maintain in his name as bank commissioner against its directors, trustees, managers or officers, or any of them, any action or proceeding which is vested in such corporation or in the stockholders or creditors thereof. (Laws 1915, p. 125.)

Sec. 11725. Official acts of commissioner and details of department business to be made public.—The commissioner shall keep in his office, in a place accessible to the general public, a bulletin board upon which he shall cause to be posted at noon on Friday, of each week a detailed statement signed by him or, in case of his absence from the City of Jefferson or inability to act, by the deputy commissioner in charge, giving the following items of general information with regard to the work of the department since the preceding statement:

1. The name of every corporation whose articles of agreement have been filed for examination in the office of the commissioner, its location and the date of filing of such articles of agreement.

2. The name and location of every corporation authorized by the commissioner to commence or continue business, its capital, surplus and the date of authorization.

3. The name of every proposed corporation which a certificate of incorporation has been refused by the commissioner, and the date of notice of refusal.

4. The name and location of every private banker, and foreign corporation, whose authorization certificate or license has been revoked by the commissioner and the date of such revocation.

5. The name of every corporation that has applied to the commissioner for permission to open a branch office, the date of such application and the location of the proposed branch.

6. The name of every corporation that has been authorized by the commissioner to open a branch office, the date of approval and the location of such branch office.

7. The name and location of every corporation and private banker authorized by the commissioner to increase or reduce its capital stock or permanent capital, the date of such authorization and the amount of the increase or reduction.

8. The names and locations of all corporations that have merged pursuant to the provisions of this chapter and the dates of such mergers.

9. The name and residence of every person appointed by the commissioner as a deputy, examiner or employe in the bank-

ing department, the title of the office to which appointed, the pension paid and the date of appointment.

10. The date on which a call for a quarterly report by banks, trust companies or private bankers was issued by the commissioner and the day designated as the day with reference to which such report should be made.

11. The name and location of every corporation and private banker of whose property and business the commissioner has taken possession and the date of taking possession, and the name and residence of every person appointed by the commissioner as a special deputy commissioner.

12. The name and location of every corporation and private banker which shall have been authorized by the commissioner to resume business, and the date of resumption.

13. The name and location of every corporation whose creditors or depositors have been paid in full by the commissioner and a meeting of whose stockholders shall have been called together with date of notice of meeting and date of meeting.

14. The name and location of every corporation subject to the provisions of this chapter whose affairs and business have been finally liquidated and the corporation dissolved.

15. The name and location of every private banker whose affairs have been liquidated and business discontinued. Every such statement, after having been so posted for one week, shall be placed on file and kept in the office of the commissioner. All such statements shall be public documents and at all reasonable times shall be open to public inspection. (Laws 1915, p. 1)

Sec. 11726. Biennial report of commissioner.—The commissioner shall report biennially to the Legislature as follows:

1. A summary of the state and condition of every corporation and private banker required to report to him and from which reports have been received during the preceding two years, with the several dates to which such reports refer, with an abstract of the whole amount of capital reported by them, the whole amount of their debts and liabilities and the total amount of their resources, specifying in the case of banks, trust companies and private bankers the amount of lawful money held by them at the time of their several reports, and such other information in relation to such corporations and bankers as, in his judgment, may be useful. Such corporations shall be divided into classes so as to correspond with the several articles in this chapter.

2. A statement of all corporations authorized by him to do business during the previous year with their names and locations and the dates on which their respective certificates of incorporation were issued, particularly designating such as have commenced business during the year.

3. A statement of the corporations and private bankers whose business has been closed either voluntarily or involuntarily, during the year, with the amount of their resources and of their deposits and other liabilities as last reported by them and the amount of unclaimed and unpaid deposits, dividends and interest held by him on account of each.

4. A statement of the amount of interest earned upon all unclaimed deposits, dividends and interest held by him pursuant to the requirements of this chapter.

5. Any amendments to this chapter, which, in his judgment, may be desirable.

6. The names and compensation of the deputies, clerks, examiners, special agents and other employes employed by him, and the whole amount of the receipts and expenditures of the department during each of the last two preceding fiscal years.

7. All such reports shall be printed at the expense of the state and paid for as other public printing. (Laws 1915, p. 126.)

ARTICLE II.

BANKS.

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Sec. 11727. Who may be incorporated.—When authorized by the bank commissioner as provided in section 11730, any five or more persons, who shall have associated themselves by articles of agreement, in writing, as provided by law, for the purpose of establishing a bank may be incorporated under any name or title designating such business. (Laws 1915, p. 128.)

Sec. 11728. Articles of agreement shall state, what.—The articles of agreement mentioned in this article shall set out:

1. The corporate name of the proposed corporation, which shall not be the name of any corporation heretofore incorporated in this state for similar purposes, or an imitation of such name.

2. The name of the city or town and county in this state in which the corporation is to be located.

3. The amount of the capital stock of the corporation, the number of shares into which it is divided, and the par value thereof; that the same has been subscribed in good faith and all thereof actually paid up in lawful money of the United States and is in the custody of the persons named as the first board of directors or managers: *Provided*, that if the subscribed capital is only \$10,000, then less than the full amount thereof may be paid in at the time of filing the articles of agreement, as provided in section 11731.

4. The names and places of residence of the several shareholders and the number of shares subscribed by each.

5. The number of directors or managers, and the names of those agreed upon for the first year.

The articles of agreement may designate the number of directors necessary to constitute a quorum, and may provide for the

number of years the corporation is to continue, which shall not exceed fifty years, or may provide that the existence of the corporation shall continue until the corporation shall be dissolved by consent of the stockholders or by proceedings instituted by the state under any statute now in force or hereafter enacted. (Laws 1915, p. 128.)

A banking corporation cannot, by its articles of incorporation, limit the number of shares which one person may own. *O'Brien v. Cummings*, 13 A. 197.

Sec. 11729. To be signed, recorded and filed in office of bank commissioner.—The articles of agreement shall be signed and acknowledged by the parties thereto, and recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located; and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner. (Laws 1915, p. 129.)

Sec. 11730. Examination and certificate as to character and capital.—When any bank shall have filed with the bank commissioner a certified copy of its articles of agreement and shall have paid all incorporation and other fees in full, as required by law, and shall have provided the cash required by law, the commissioner shall, before such bank shall complete its incorporation, examine or cause an examination to be made, in order to ascertain whether the requisite capital of such bank has been subscribed in good faith and paid in actual cash and is ready for use in the transaction of business of the proposed bank, and whether the character, responsibility and general fitness of the persons named in such articles of agreement are such as to command confidence and warrant belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter. In case the commissioner shall find all the provisions of the law have been complied with and shall have satisfied himself by such investigation as to the facts as above provided, he shall grant a certificate setting forth that such corporation has been duly organized and the amount of its capital subscribed and paid up in full. Such certificate shall be recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located, and such certificate, so recorded, or certified copies thereof, shall be taken in all the courts of this state as evidence of such incorporation; and the existence of such incorporation shall continue for the period limited in its articles of agreement, if there fixed, and if not there fixed, then until the corporation is dissolved by consent of its stockholders or until its corporate existence ends pursuant to the laws of this state. In case the commissioner shall not be satisfied, as the result of such examination, that the character, responsibility and general fitness of the persons named in such articles of

agreement is up to the standard above provided, and on that account shall refuse to grant the certificate of incorporation, shall forthwith give notice thereof to the proposed incorporator from whom such articles of agreement were received; who, if he so desire, may within ten days thereafter appeal from such refusal to a board composed of the governor, the attorney-general and the state treasurer, which board shall within twenty days thereafter finally decide the matter, and the commissioner shall act in accordance with such decision. Such board may prescribe rules and regulations for the proceedings in connection with such appeal. (Laws 1915, p. 129.)

Action of mandamus will lie to compel issuance of certificate where applicant has complied with requirements of the law. *State ex rel. v. Cook*, 174 Mo. 100, 73 S. W. 489.

Sec. 11731. Cash capital required.—The cash capital of such corporation shall amount to not less than:

(a) \$10,000, if the place where the business is to be transacted is an unincorporated or incorporated village or town, the population of which does not exceed three thousand; and such bank of \$10,000 may be incorporated when there has been paid in cash one-half of said subscribed capital and in addition thereto an amount deemed by the bank commissioner adequate for the bank's furniture and fixtures; provided that until the bank's capital has been fully paid it shall not invest any of its funds in the purchase of a banking house.

(b) \$25,000, if the place where its business is to be transacted is an unincorporated or incorporated town, the population of which exceeds three thousand but does not exceed fifteen thousand.

(c) \$50,000, if the place where its business is to be transacted is a town, the population of which exceeds fifteen thousand but does not exceed twenty-five thousand.

(d) \$100,000, if the place where its business is to be transacted is a city, the population of which exceeds twenty-five thousand.

Provided, however, that any bank now existing, the capital of which is not equal to that limitation required of a bank in its location, may continue to do business under its present capital. *Provided,* that until its capital and surplus fund shall equal twenty per centum more than the minimum of capital required for a bank in its location, one-tenth of its net earnings at the close of each dividend period, as provided in section 11759, shall be credited to the surplus fund, and no such bank shall declare credit or pay any dividend for any dividend period to its stockholders until it shall have made such credit to its surplus fund for that period. (Laws 1915, p. 130.)

See *State ex rel. v. Cook*, 174 Mo. 100, 73 S. W. 489.

Sec. 11732. Capital stock to be divided into shares—vendor and vendee liable, when.—The capital stock of such corporation shall be divided into shares of not less than one hundred dollars each. If any shareholder sell or transfer his shares, or any number thereof, in such corporation before they shall have been fully paid, the vendor as well as the vendee shall be liable, the former for one year after notice to the corporation of such sale or transfer, as indorser, for whatever is still due on such shares. (Laws 1915, p. 130.)

Directors can only issue stock for money paid, labor done or property actually received, and cannot exchange their stock for stock of an insolvent corporation. *McDaniel v. Harvey*, 51 A. 198.

Sec. 11733. Prohibition against receiving commissions, etc., for organizing a bank or securing subscriptions to stock.—No individual, partnership, or corporation shall, directly or indirectly, receive or contract to receive any commission, compensation, bonus, right or privilege of any kind for organizing any bank in this state, or for securing a subscription to the original capital stock or surplus of any bank in this state, or to any increase thereof: *Provided*, that this section shall not be construed as prohibiting an attorney at law from receiving compensation for legal service in connection therewith. Each and every individual, partnership or corporation violating the provisions of this section shall forfeit to the state \$100 for each and every such violation, and in addition thereto double the amount of such commission, compensation or bonus. (Laws 1915, p. 131.)

Sec. 11734. Capital stock to be paid up, when—how collected.—The remaining unpaid portion of the capital stock provided for in the articles of agreement shall be paid up in cash within one year next after the date of the certificate of incorporation, at such times and in such amounts as the board of directors may require; and if the capital shall not be fully paid within one year after the date of the certificate of incorporation, the commissioner shall forthwith take possession of the business and property of the bank. In case any shareholder shall refuse payment, the debt may be collected by suit at law: *Provided*, that the board of directors may, at their discretion, forfeit as many of the shares of such delinquent shareholder as shall be the equivalent of the sum due and unpaid on such shares, and dispose of such forfeited shares to any one willing to purchase them: *Provided furthermore*, that no installment on shares shall be considered due and payable until notice to that effect shall have been given by publication for two weeks in some newspaper published in the county or city where such corporation is located, or in writing, personally served on the party required to pay. (Laws 1915, p. 131.)

Sec. 11735. National bank may become state bank
cedure and effect thereof.—Any banking corporation organized under the laws of the United States and having its place of business in this state may become an incorporated bank of this state with all the powers and subject to all the obligations and liabilities of banks organized under the provisions of this article, provided such banking corporation has authority by virtue of an act of the United States, to dissolve its organization as a national banking corporation. A national banking corporation desiring to become such an incorporated bank of this state shall proceed in the following manner:

1. It shall take such action, in the manner prescribed and authorized by the laws of the United States, as shall make its dissolution as a national banking corporation effective at a date certain.

2. Its stockholders shall proceed in all respects as provided by law for other individuals in incorporating a bank, except that the articles of agreement may provide that instead of the capital stock being paid up in lawful money the same may be paid up by an assignment of the assets of the national banking corporation about to liquidate, such assignment to take effect on the aforesaid future date certain, and the commissioner may allow such assignment to be accepted instead of cash, if the stockholders shall have certified in the articles of agreement that the net value of such assigned assets is equal to at least the value of the amount of the stock of such proposed bank, and the commissioner, as the result of an examination by himself, his deputies or examiners, is satisfied that such assets are of such value. (1915, p. 131.)

Sec. 11736. Branch offices.—Any bank possessing a capital and surplus of \$1,000,000 or more may file application with the commissioner, upon such conditions and under such regulations as may be prescribed by the said commissioner, for the purpose of securing authority to establish branches in foreign countries or dependencies of the United States for the furtherance of the foreign commerce of the United States, and to act, if required, as fiscal agents of the United States. Such application shall specify, in addition to the name and capital of the bank, the place or places where the banking operations proposed to be carried on, and the amount of capital set aside for the conduct of its foreign business. The commissioner shall have power to approve or to reject such application if, in his judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the grant of such application is deemed inexpedient. Every bank which receives authority to establish foreign branches shall be required

at all times to furnish information concerning the condition of such branches to the commissioner upon demand, and the commissioner may order special examinations of the said foreign branches at such time or times as he may deem best. Every such bank shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accruing at each branch as a separate item. (Laws 1915, p. 132.)

Sec. 11737. Rights and powers.—Every such corporation shall be authorized and empowered:

1. To conduct the business of receiving money on deposit and allowing interest thereon not exceeding the legal rate or without allowing interest thereon, and of buying and selling exchange, gold, silver, coin of all kinds, uncurrent money, of loaning money upon real estate or personal property, and upon collateral or personal security, at a rate of interest not exceeding that allowed by law, and also of buying, investing in selling and discounting negotiable and non-negotiable paper of all kinds, including bonds as well as all kinds of commercial paper; and for all loans and discounts made, such corporation may receive and retain in advance the interest: *Provided, however,* that no bank shall maintain in this state a branch bank or receive deposits or pay checks except in its own banking house.

2. To accept for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one year: *Provided,* that no bank shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid up and unimpaired capital stock and surplus fund, except with the approval of the bank commissioner under such general regulations as to amount of acceptances as the commissioner may prescribe.

3. To purchase and hold, for the purpose of becoming a member of a federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such reserve bank pursuant to an act of congress, approved December twenty-three, nineteen hundred and thirteen, entitled the "Federal reserve act;" and any amendments thereto; to become a member of such federal reserve bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member bank by the "federal reserve act" and any amendment thereto. Such member bank and its directors, officers and stockholders shall continue to be subject, however, to all liabil-

ities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to banks.

4. To purchase and hold the stock of any safe deposit company organized and existing under the laws of the state of Missouri and doing business on premises owned or leased by the bank; provided that the purchasing and holding of such stock is first duly authorized by resolution of the board of directors of the bank and by the written approval of the commissioner stating the number and amount of the shares which the bank may purchase and hold, such amount not to be less than ninety per cent. of the total and not to be sold or transferred except as a whole and not to be pledged at all. All sales or transfers or pledges in violation hereof to be void.

5. To purchase, hold or convey real property for the following purposes:

(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be conveyed to it in satisfaction or part satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or liens held by it.

6. To receive, upon terms and conditions to be prescribed by the bank, upon deposit for safe-keeping, bonds, mortgages, jewelry, plate, stocks, securities and valuable papers of any kind, and other personal property, for hire, and to let out receptacles for safe deposit of personal property.

7. To act as fiscal agent of the United States, of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money and receive and deliver certificates of stock, bonds and other evidences of indebtedness. (Laws 1915, p. 132.)

When no restrictions appear in the charter, a bank can buy outright promissory notes, but not at a greater rate of discount than the rate of interest that it might lawfully charge for the loan of money. *Salmon, etc., v. Leyser*, 116 Mo. 51, 22 S. W. 504. To save itself from loss, a bank may take an assignment of an account due a debtor. *Bank v. Tamblin*, 7 A. 570. Banks can handle negotiable bonds, can sell or place them for their customers. *Mt. Vernon Bank v. Porter*, 52 A. 244. Money deposited in a bank may be paid out on the oral order of a depositor, the bank acting as the agent of the depositor and not as the agent of the payee. *Ripley, etc., v. Insurance Co.*, 145 Mo. 142, 47 S. W. 1. A bank, in undertaking to collect a draft in the absence of special contract, has no right to receive anything but cash in payment therefor. *Bank v. Bank*, 109 A. 665, 83 S. W. 537. A bank is liable for failure to present at proper time a check received for collection. *Ivory v. Bank*, 36 Mo. 475. It is also liable for negligence of its agent resulting in failure to collect checks. *Gerhardt v. Institution*, 38 Mo. 60; *Landa v. Bank*, 118 A 356, 94 S. W. 770. The ordinary relation between bank and depositor is that of debtor and creditor. *Knecht v. Savings Institution*, 2 A. 563.

Depositor's fund may be applied on his debts to the bank. *Park Bank v. Schneid-ermeyer*, 62 A. 179. See *Denny et al. v. Jefferson County*, 272 Mo. 436, 199 S. W. 250.

Sec. 11738. May purchase stock in institution to develop and maintain market for foreign and domestic exchange.—Every such corporation shall be authorized and empowered to subscribe for, purchase, hold, pledge and sell the stock of a corporation organized and existing under the laws of the state of Missouri for the purpose of developing and maintaining a stable and open market for foreign and domestic bills of exchange, notes, acceptances, and other evidences of debt originating in connection with foreign and domestic trade, by the purchase, investment in, and sale thereof; provided that the investment of a bank in the stock of such a corporation shall not exceed fifteen per centum of its capital and surplus, and provided that this section shall not empower such a corporation to subscribe for, purchase and hold stock in a corporation that makes a business of receiving deposits. (Laws 1919, p. 158.)

Sec. 11739. Restrictions on taking and holding real estate.—All real estate purchased by any bank or taken by it in its own right in settlement of debts due it, shall be conveyed to it directly by name and the conveyance immediately recorded in the office of the proper recording officer of the county or city in which such real estate is located. Every parcel of real estate so purchased or acquired by any bank shall be sold by it within six years of the date on which it shall have been acquired unless there shall be a building thereon occupied in whole or in part by it as an office; provided, that if at any time a bank changes its location it may have six years from the date of such change to sell the former location. (Laws 1915, p. 134.)

Sec. 11740. Restrictions on loans, purchases of securities and total liabilities to bank of any one person.—A bank subject to the provisions of this article:

1. Shall not directly or indirectly lend to any individual, partnership, corporation, or body politic, either by means of letters of credit, by acceptance of drafts or by discount or purchase of notes, bills of exchange or other obligations of such individual, partnership, corporation or body politic an amount or amounts in the aggregate which will exceed fifteen (15) per centum of the capital stock actually paid in and surplus fund of such bank if located in a city having a population of one hundred thousand or over; twenty (20) per centum of the capital stock actually paid in and surplus fund of such bank if located in a city having a population of less than one hundred thousand and over seven thousand; and twenty-five (25) per centum of the capital stock

actually paid in and surplus fund of such bank if located where in the state, with the following exceptions:

(a) The restrictions in this subdivision shall not apply to loans to, or investments in the interest-bearing obligations of the United States, this state or any city, county, town, village or political subdivision of this state.

(b) The total liability to such bank, of any state other than the state of Missouri, or of any foreign nation, or of a municipality or railroad corporation, or of a corporation subject to the jurisdiction of a public service commission of this state, may equal but not exceed twenty-five per centum of the capital stock actually paid in and surplus fund of such bank; and the total liabilities of such bank of any individual, partnership, or of any other corporation or body politic, may equal but not exceed twenty-five per centum of the capital stock actually paid in and surplus fund of such bank, provided that at least ten (10) per centum of such total liabilities, if the bank is located in a city having a population of one hundred thousand or over, and at least five (5) per centum of such total liabilities, if the bank is located in a city having a population of less than one hundred thousand and over one thousand, are (a) upon commercial or business paper actually owned by the person negotiating the same to such bank and endorsed by such person without limitation, or (b) are secured by collateral security having an ascertained market value of at least fifteen per centum more than the amount of the liabilities so secured.

(c) The total liabilities to such bank of any individual, partnership or corporation may equal but not exceed thirty-five (35) per centum of the capital stock actually paid in and surplus fund of such bank, provided that all or any part of such total liabilities is upon paper based upon the collateral security of warehouse receipts covering agricultural products in public elevators and public warehouses subject to state supervision and regulation in this state or in any other state of the United States, under the following conditions: First, that the actual market value of the property held in store and covered by such receipts shall at all times exceed by at least fifteen (15) per centum the amount loaned upon the same; and, second, that the property covered by such receipts shall be insured to the full market value thereof against loss by fire and lightning, the insurance policies to be issued by corporations or individuals licensed to do business by the state in which the property is located, and when such insurance has been used to the limit that it can be secured, then in corporations or with individuals licensed to do an insurance business by the state or country of their incorporation or residence; and, all policies covering property on which the loan

made shall have endorsed thereon, loss, if any, payable to the holder of such warehouse receipts; *and provided further*, that in arriving at the amount that may be loaned by any bank to any individual partnership or corporation on such elevator or warehouse receipts there shall be deducted from said 35 per centum of its capital and surplus fund the total of all other liabilities of such individual partnership or corporation to such bank.

(d) In computing the total liabilities of any individual to a bank there shall be included all liabilities to the bank of any partnership of which he is a member, and any loans made for his benefit or for the benefit of such partnership; of any partnership to a bank there shall be included all liabilities of its individual members and all loans made for the benefit of such partnership or any member thereof; and of any corporation to a bank there shall be included all loans made for the benefit of the corporation.

(e) The purchase or discount of drafts, or bills of exchange drawn in good faith against actually existing values, shall not be considered as money borrowed within the meaning of this section.

(f) This subdivision shall not be construed to render unlawful the continued holding of any securities heretofore lawfully acquired.

2. Shall not make any loans secured by the stock of another bank or trust company if by the making of such loan the total stock of such other bank or trust company owned and held as collateral security by it will exceed fifteen per centum of the total capital stock of such other bank or trust company.

3. Shall not at any time take or hold loans or discounts secured by bonds and stock or either in any corporation, except as above provided, which loans in the aggregate shall exceed thirty-three and one-third per centum of the capital and surplus fund of the bank making the loan.

4. Shall not make any loan upon the securities of one or more corporations the payment of which loan is undertaken in whole or in part severally, but not jointly, by two or more individuals, firms or corporations.

(a) If the prospective borrowers or underwriters be obligated absolutely or contingently to purchase the securities, or any of them, collateral to the proposed loan, unless they shall have paid on account of the purchase of such securities an amount in cash or its equivalent equal to at least twenty per centum of the several amounts for which they remain obligated in completing the purchase;

(b) If the bank considering the making of the loan be liable directly, indirectly or contingently, for the repayment of the proposed loan or any part thereof;

(c) If the term of the proposed loan, including any renewal thereof, by agreement, express or implied, exceeds the period of two years;

(d) If the amount, under any circumstances, exceeds twenty-five per centum of the capital and surplus fund of the bank.

5. Shall not, nor shall any of its directors, officers, or employes be interested in the purchase of any certificate of deposit, pass book, promissory note or other evidence of debt issued by it, for less than the principal amount of the debt (without interest) for which it was issued. Every bank or person violating the provisions of this subdivision shall forfeit to the state the face value of the note or other evidence of debt so purchased.

6. Shall not make any loan or discount on the security of the shares of its own capital stock, or be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition unless the time is extended by the bank commissioner. Any bank violating any of the provisions of this subdivision shall forfeit to the state the amount of the loan or purchase.

7. Shall not knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained or market value of at least fifteen per centum more than the amount of the loan. Any bank violating the provisions of this subdivision shall forfeit to the state the amount of the loan.

8. No director, officer, clerk or employe of a bank of this state shall be permitted to borrow any of the money of the bank in which he is a director, officer, clerk or employe in excess of ten per centum of the capital and surplus fund without the consent of a majority of the directors of the bank, other than the borrower, first having been obtained in a meeting of the board, said consent to be made a matter of record before the loan is made: *Provided*, if any such officer, director, clerk or employe shall own or control a majority of the stock of any other corporation a loan to that corporation shall be considered for the purpose of this subdivision as a loan to him. Every bank or officer thereof knowingly violating the provisions of this subdivision shall, for each offense, forfeit to the state the amount lent.

9. *Provided*, that the provisions in this section shall not be so construed as in anywise to interfere with the rules and regulations of any clearing house association in this state in reference to daily balances and provided that this section shall not apply

to balances due from any correspondent subject to draft. (Laws 1915, p. 134.)

While subsection six of this section prohibits a bank from taking its own stock as security for a loan, the statute only applies to a loan contemporaneously made, and permits the taking of such security upon a debt previously contracted. *Farmers Bank of Deepwater v. Ogden*, 192 A. 243, 182 S. W. 501.

The directors are bound to know all that is done by the bank beyond the merest routine, and when, by the exercise of ordinary business care, they could have known that more than one-fourth of the capital stock was loaned to one insolvent person or company, they became liable for losses growing out of such illegal loan, in an action at law by the bank while it is a going concern or in an action in equity, by the stockholders. *Union, etc. v. Hill*, 148 Mo. 380, 49 S. W. 1012; *Stone v. Rottman*, 183 Mo. 552, 82 S. W. 76. See, also, *Thompson v. Greeley*, 107 Mo. 577, 17 S. W. 962; *Thompson v. Swain*, 107 Mo. 594, 17 S. W. 967. Where the loan is made in excess of the per cent of capital stock permitted by law, the loan is valid and enforceable at least to the limit of the lawful per cent. *McClintock v. Bank*, 120 Mo. 127, 24 S. W. 1052.

Sec. 11741. Money not to be employed in trade or commerce.—No corporation now existing, nor any hereafter organized under any law of this state, whether general or special, as a bank, or to carry on a banking business, shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants: *Provided*, that it may sell all kinds of property which may come into its possession as collateral security for loans, or in the ordinary collection of debts. (Laws 1915, p. 137.)

Sec. 11742. Restrictions as to entries in books—amortization of securities.—1. No bank shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other individual, partnership or corporation, or under any title or designation that is not truly descriptive thereof.

2. The bonds and other interest-bearing corporate securities purchased by a bank shall be entered on its books at the actual cost thereof, and for the purpose of calculating the undivided profits applicable to the payment of dividends, such securities shall not be estimated at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such security purchased for a sum in excess of the amount payable thereon at maturity, and charging to profit and loss, a sufficient sum to bring it to par at maturity, or adding to the cost of any such security purchased at less than the amount payable thereon at maturity, and crediting to profit and loss, a sufficient sum to bring it to par at maturity; but nothing herein contained shall prevent a bank from carrying such bonds and other interest-bearing corporate securities on its books at their market value.

3. No bank shall, except with the written approval of the commissioner, enter or at any time carry on its books the real estate and the building or buildings thereon, used by it as its place or places of business or the furniture and fixtures in said building at a valuation exceeding their actual cost to such bank.

4. Every bank shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the commissioner pursuant to section 11698. (Laws 1915, p. 137.)

Sec. 11743. Reserves against demand deposits.—Every bank shall maintain reserves against its aggregate demand deposits as follows:

1. Eighteen per centum of such deposits, if such bank is located in a city having a population of two hundred thousand or over and at least seven per centum of such deposits shall be maintained as reserves on hand.

2. Fifteen per centum of such deposits, if such bank is located in a city having a population of twenty-five thousand or over and less than two hundred thousand; and at least six per centum of all such deposits shall be maintained as reserves on hand:

3. Fifteen per centum of such deposits if such bank is located elsewhere in the state. The reserves on hand required by this section shall consist of any form of coin or currency, authorized by the laws of the United States. If any bank shall have become a member of any reserve bank it may maintain as reserves on deposit with such federal reserve bank such portion of its total reserves as shall be required or permitted, of members of such federal reserve bank; and if such bank has an office in a city having a population of two hundred thousand or over, the remainder of its total reserves shall be carried as reserves on hand: *Provided, however*, that any bank becoming a member of a federal reserve bank, and while it continues such member, shall be required to maintain only such reserves as are required by the federal reserve act and any amendments thereto.

4. Any director, officer or employe of a bank who makes any agreement, express or implied, before or at the time of issuing a certificate of deposit by which its holder may demand or receive payment thereof in advance of its maturity, or who before or at the time of receiving a savings deposit, makes an agreement, express or implied, by which the holder of the savings pass book may demand or receive payment of the savings deposit in advance of the time provided for payment under the rules and regulations under which the savings deposit was received, shall forfeit and pay the sum of one hundred dollars for each violation of this pro-

vision to be collected as provided for in this act. (Laws 1919, p. 155.)

Section cited and approved in *Denny et al. v. Jefferson County*, 272 Mo. 436, 199 S. W. 250. See, also, *State v. Lincoln Trust Co.*, 144 Mo. 562, 46 S. W. 593.

Sec. 11744. Reserve depositaries—designation and approval.—Any bank may keep the reserves on deposit provided for by the preceding section in a depositary or depositaries designated by it, and which, except as otherwise provided in that section, shall be a bank, trust company or national banking association approved by the bank commissioner. (Laws 1915, p. 138.)

Sec. 11745. Restoring a depleted cash reserve.—Whenever the reserve of a bank shall fall below the amount hereinbefore required of it, then such bank shall not make any new loans, discount or acceptances, except the discount of purchase of bills of exchange, payable at sight, until it shall have restored its required reserve. (Laws 1915, p. 139.)

Sec. 11746. Business shall be managed by board of directors—qualifications and disqualifications of directors.—The affairs and business of the corporation shall be managed by a board of directors or managers, consisting of not less than five nor more than thirty shareholders, who shall be elected annually: *Provided*, that banks already incorporated when this act shall take effect and having three directors may continue with that number if they choose for a period of two years thereafter. Each director must be a citizen of the United States, and at least three-fourths of the directors must be residents of this state at the time of their election and during their continuance in office. If at a time when not more than three-fourths of the directors are residents of this state, any director shall cease to be a resident of this state, he shall forthwith cease to be a director of the bank and his office shall be vacant. Every director of a bank having a capital of twenty-five thousand dollars or over shall be a stockholder of the bank owning in his own right an amount equal to at least five shares, and of a bank having a capital of less than twenty-five thousand dollars, a stockholder in his own right in an amount equal to at least two shares; and every person elected to be a director who, after such election, shall hypothecate, pledge or cease to be the owner in his own right of the amount of stock aforesaid, shall cease to be a director of the bank and his office shall be vacant, and he shall not be eligible for re-election as a director for a period of one year from the date of the next succeeding annual meeting, and no person shall be a director in any bank against whom such bank shall hold a judgment. (Laws 1915, p. 139.)

This section, like many others in the law, is intended to regulate the manner of conducting the bank as between the officers and the bank. *Bank of Kirksville v. Sloop et al.*, 198 A. 225, 200 S. W. 72. The directors are not liable if they exercise

ordinary business care in managing affairs of their bank. *Cope v. West* Mo. 638, 87 S. W. 504. The existence of more directors than the charter does not invalidate their acts, the stockholders alone having the right to sue. *Hax v. Davis*, 39 A. 453.

Sec. 11747. Oath of directors.—Every person who is elected director of a bank shall, within thirty days after such election, qualify himself as such director by filing with the officers of such bank an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the bank and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such bank, and that he is the owner in good faith and his own right, of shares of the capital of the bank the number required by this article, subscribed by him or in his name on the books of the bank and that the same are not hypothecated, or in any way pledged as security for any debt, and, in case of re-election or reappointment, that such shares were not hypothecated, or in any way pledged as security for any loan or debt during his previous term, provided such term was not after the passage of this act. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and the fact of such oath having been made and filed with the officers of the bank shall be noted in the records of the acts of the directors. Failure to comply with this provision within the time specified shall work a forfeiture of office: *Provided, however*, that the bank commissioner may, in any case deemed sufficient by him, extend the time; and when a vacancy occurs by such failure the board of directors shall at the next regular meeting thereafter, enter the fact of such vacancy upon their records and promptly proceed to elect some competent person to fill the vacancy for the unexpired term. (Laws 1915, p. 139.)

Sec. 11748. Tenure of office of directors.—The directors shall, unless sooner removed or disqualified, hold office until the next annual meeting of the stockholders, and until their successors are elected and have qualified. (Laws 1915, p. 140.)

Sec. 11749. Vacancies in board of directors.—All vacancies in the office of directors shall be filled by election by the stockholders except as hereinafter provided. Vacancies not exceeding one-third of the whole number of the board may be filled by the affirmative vote of a majority of the directors then in office. The directors so elected may hold office until such vacancies are filled by the stockholders at a special or annual meeting. (Laws 1915, p. 140.)

Sec. 11750. Change of number of directors.—The stockholders at any annual meeting, provided notice of the proposed change be given in the notice of such meeting, may, by a majority

of all the votes of the stockholders of such bank, change by resolution the number of its directors to such number not less than five nor more than thirty as they may decide, but such change shall not become effective until approved by the commissioner; or such bank may change the number of its directors by amending its articles of association. A copy of every resolution changing the number of directors at an annual meeting, together with proof by affidavit of the publication of said notice of the annual meeting, shall be immediately filed in the office of the commissioner; and a certified copy thereof, together with the written approval of the commissioner, shall be immediately filed in the office of the recorder of the county or city in which such bank is located. (Laws 1915, p. 140.)

Sec. 11751. Annual meeting of directors—election of officers.—Within two weeks after the date on which the annual meeting of stockholders is held the directors elected at such meeting shall, after their due qualification, hold a meeting at which they shall elect a president from their own number, one or more vice-presidents, and such other officers as are provided for by the by-laws to be elected annually. (Laws 1915; p. 140.)

Unless meeting is called in manner prescribed in the by-laws and notice is given, the meeting possesses no validity. *Hill v. Min. Co.*, 119 Mo. 9, 24 S. W. 223.

Sec. 11752. Monthly meetings of directors—statement to directors.—The board of directors of each and every bank organized or doing business under this article shall hold a regular meeting at least once each month and keep a written record of its approval or disapproval of each and every purchase and sale of securities and each and every discount, loan, acceptance, renewal or other advance, including every overdraft in excess of \$100, made since the last regular meeting of the board. If there shall be collateral to such indebtedness, it shall be described as of the date of the meeting. There shall also be submitted to such meeting, and filed with the records thereof, an additional list giving the aggregate of loans, discounts, acceptances and advances, including overdrafts, to each individual, partnership, corporation or person, whose liability to the bank has been increased \$1,000 or more since the last regular meeting of the board; and also a list showing all paper past due thirty days or more. And at such monthly meeting the minutes of the meeting shall show the aggregate of the then existing indebtedness and liability to the bank of each of the directors, officers and employes thereof. No bills payable shall be made, and no bills shall be rediscounted by the bank, except with the consent of the board of directors: *Provided, however*, that if the bank be a member of a federal reserve bank, rediscounts may be made to it by the officers in accordance with its rules, a list of all such rediscounts to be sub-

mitted to the next regular meeting of the board. (Laws 1915, p. 140.)

Under this section, a note executed by a cashier without authority from the board is void. Implied authority cannot be invoked to sustain transaction prohibited by statute, or beyond powers of banking corporation. *W. A. Gage & Co. v. Bank of Holcomb*, 196 S. W. 1077. (Citing many cases.) Where cashier borrowed money, without written authority from board of directors, and money was used by bank in regular course of business, plaintiff was entitled to recover in an action for money received, even though note given by cashier was unenforceable. *Union National Bank of K. C. v. Lyons*, 220 Mo. 538, 119 S. W. 540. Board not authorized to approve a sale of securities by the cashier after it is made where there was no prior authority as required by law. *Bank of Kirksville v. Sloop et al.*, 198 A. 225, 200 S. W. 72. Notice to a director as to where the proceeds of note discounted were to go was notice to bank. *Clerk etc. v. Thomas*, 2 A. 367. Knowledge of the president is knowledge of the bank and his absence is no excuse for bank's failure to act upon such knowledge. *Central etc. v. Levin*, 6 A. 543.

Sec. 11753. Examinations by directors into affairs of banks—may employ assistants.—It shall be the duty of the board of directors of every bank at least once in each year and whenever and as often as required by the bank commissioner, and within thirty days after notice from him, to examine, or to cause a committee of at least three of its members or stockholders to examine fully the books, papers and affairs of the bank, and the loans and discounts and acceptances thereof, and particularly the loans or discounts or acceptances made directly or indirectly to its officers or directors, or for the benefit of such officers or directors, or for the benefit of other corporations of which such officers or directors are also officers or directors, or in which they have a beneficial interest as stockholders, creditors, or otherwise, with the special view of ascertaining their safety and present value, and the value of the collateral security, if any, held in connection therewith, and into such other matters as the bank commissioner may require. Such directors or committee of stockholders shall have the power to employ such assistance in making such examination as they may deem necessary. (Laws 1915, p. 141.)

In view of the duties of bank directors to examine the bank's affairs, a book-keeper, whose act was not willful, was held not liable on his bond for speculations of cashier and other officers of bank. *Citizens Trust Co. v. Ferguson*, 195 A. 330, 190 S. W. 395.

Sec. 11754. Reports of directors' examinations—penalty for failure to make or file.—Within ten days succeeding any examination made pursuant to the requirements of the last section, a report in writing thereof, sworn to by the directors or stockholders making the same, shall be made to the board of directors of such bank, and placed on file in said bank, and a duplicate thereof filed in the office of the bank commissioner. Such report shall particularly contain a statement of the assets and liabilities of the bank examined, as shown by the books, together with such deductions from the assets, and the addition of such liabilities, direct, indirect, contingent or otherwise as such directors or com-

mittee, after such examination, may find necessary in order to determine the true condition of the bank. It shall also contain a statement showing in detail every known liability to such bank, direct, indirect, contingent, or otherwise of every officer or director thereof and of every corporation in which any such officer or director owns stock to the amount of twenty-five per centum of the total outstanding stock, or of which any such officer or director is also an officer or director. It shall also contain a statement, in detail, of loans, if any, which in their opinion are doubtful or worthless, together with their reasons for so regarding them; also a statement of loans made on collateral security which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact, and its actual value as nearly as possible. Such report shall also contain a statement of overdrafts, of the names and amounts of such as they consider worthless or doubtful, and a full statement of such other matters as affect the solvency and soundness of the institution. If the directors of any bank shall fail to make, or to cause to be made or to file such report of examination in the manner, and within the time, specified, such bank shall forfeit to the state one hundred dollars for every day such report shall be delayed. (Laws 1915, p. 141.)

Sec. 11755. Communications from banking department must be submitted to directors and noted in minutes.—Each official communication directed by the bank commissioner or one of his deputies to a bank or to any officer thereof, relating to an examination or investigation conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the bank, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board. (Laws 1915, p. 142.)

Sec. 11756. Reports to commissioner—penalty for failure to make.—Within ten days after service upon it of the notice provided for by section 11690, every bank shall make a written report to the commissioner, which report shall be in the form and shall contain the matters prescribed by the commissioner and shall specifically state the items of capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities, and such other items as may be necessary to inform the public as to the financial condition and solvency of the bank, or which the commissioner may deem proper to include therein. Every such report shall be verified by the oaths of the president or vice-president and cashier or assistant

cashier, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and such report shall be attested by three directors, and shall be a report of the actual condition of the bank at the close of business on the day designated and which shall be prior to such call. Every such report exclusive of the verification, shall within thirty days after it shall have been made, with the commissioner, be published by the bank in one issue of a paper of the place where its place of business is located, if no newspaper is published there, in a newspaper of general circulation in the town and community in which the bank is located. The said newspaper to be designated by the board of directors. A copy of such publication, with the affidavit of the publisher or printer, shall be attached to such report: *Provided*, if said bank is located in a town or city having a population exceeding ten thousand inhabitants, then such publication must be in a daily newspaper, if such is published in such city; but if such bank is located in a town or city having a population of ten thousand inhabitants or less, then said publication may be in either a daily or a weekly newspaper published in said town or city as aforesaid; and in all cases, a copy of the said statement shall be posted in the bank house accessible to all. Every such bank shall also make such other special reports to the commissioner as he may from time to time require, in such form and at such date as may be prescribed by him and such report shall, if required by him, be verified in such manner as he may prescribe. If any such bank shall fail to make any report required by this section on or before the date designated for the making thereof, or shall fail to include in such report any matter required by the commissioner, such bank shall be liable to the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that such bank shall fail to report any such omitted matter, unless the time for such report shall have been extended by the commissioner. Should any officer, agent or cashier of any such bank or any director thereof willfully make the statement so required of him or them, or willfully corruptly make a false statement, he or they, and each of them, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, upon information, punished by a fine for each offense not exceeding five hundred dollars, and not less than one hundred dollars, or by imprisonment not less than one nor more than twelve months in the city or county jail, or by both such fine and imprisonment. (Laws 1915, p. 142.)

Sec. 11757. Calculation of earnings for dividend period. To determine the amount of gross earnings of a bank for an annual dividend period the following items may be included:

1. All earnings actually received during such period, less interest accrued and unpaid included in the last previous calculation of earnings;

2. Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this article upon which debts no default of more than one year exists and upon corporate stocks, bonds, or other interest-bearing obligations owned by it upon which no default exists;

3. The sums added to the cost of securities purchased for less than par as a result of amortization, provided the market value of such securities is at least equal to their present cost as determined by amortization;

4. Any profits actually received during such period from the sale of securities, real estate or other property owned by it;

5. Sums recovered on items previously charged off, and any amounts allowed by the bank commissioner on account of assets previously disallowed and charged off;

6. *Provided*, the bank commissioner shall have approved, and only to the extent of such approval, any increase in the book value of an office building owned by it, which building or a portion thereof is used by it as a place of business.

To determine the amount of net earnings for such dividend period the following items shall be deducted from gross earnings:

1. All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts, and the management of its affairs, properly belonging to the period under consideration for the calculation of net earnings for dividend purposes, and not previously deducted for such purposes;

2. Interest paid, or accrued and unpaid, upon debts owing by it, and properly belonging to the period under consideration for the calculation of net earnings for dividend purposes, and not previously deducted for such purposes;

3. The amounts deducted through amortization from the cost of corporate stocks, bonds or other interest-bearing obligations purchased above par in order to bring them to par at maturity;

4. All losses sustained by it. In the computation of such losses all debts owing it shall be included upon which no interest shall have been paid for more than two years or on which a judgment has been recovered which shall have remained unsatisfied for two years: *Provided*, that the bank commissioner, in either case, may extend such time beyond said period of two years; and such other assets as shall have been disallowed by the bank commissioner, or by its board of directors.

The balance thus obtained shall constitute the net earnings of such bank for such period. (Laws 1915, p. 143.)

Sec. 11758. Surplus fund—of what composed, and for what purposes used.—Every bank shall create a fund to be known as a surplus fund. Such fund may be created or increased by contributions, by transfers from undivided profits, or from net earnings. Such fund up to twenty per centum of the capital of the bank shall be used only for the payment of losses in excess of undivided profits. (Laws 1915, p. 144.)

See note to following section.

Sec. 11759. How net earnings credited for dividend purposes—credits to surplus fund and to undivided profits—dividends to stockholders.—When the net earnings of a bank have been determined at the close of a dividend period as provided in section 11757, if its surplus fund does not equal twenty per centum of the bank's capital, one-tenth of such net earnings shall be credited to the surplus fund or so much thereof, less than one-tenth, as will make such fund equal twenty per centum of such capital: *Provided*, that until the capital and surplus fund of any bank now existing, the capital of which is not equal to the requirements of section 11731, equals twenty per centum more than the minimum of capital for a bank in its location one-tenth of its net earnings at the close of each dividend period shall be credited to the surplus fund. The balance of such net earnings, or the entire amount thereof if such fund equals such twenty per centum, may be credited to the bank's profit and loss account; or, if its expenses and losses for such dividend period exceed its gross earnings, such excess shall be charged to its profit and loss account. The credit balance of such account shall constitute the undivided profits at the close of such dividend period, and shall be available for dividends. The directors of any bank may from time to time declare such dividends as they shall judge expedient from such undivided profits. No bank shall declare, credit or pay any dividend to its stockholders until it shall have made good any existing impairment of its capital and all officers or directors of such bank who shall assent to declaring and paying a dividend whilst the capital stock is so impaired, shall be jointly and severally liable to the creditors of the bank to the amount of such dividend for any loss resulting from the payment of such dividend. (Laws 1915, p. 145.)

A section containing provision similar to this and the one preceding was held mandatory in *Lapsley v. Bank*, 105 A. 98, 78 S. W. 1095.

Sec. 11760. May reduce capital stock, when.—Every bank now doing business in this state under any law thereof, general or special, may at any time reduce its capital stock to any sum not less than the amount required by law for a bank in its location:

Provided, that no reduction of such stock shall be made, except upon the written consent of the owners of not less than two-thirds of the stock of such bank. Notice of the intention to so reduce the capital stock shall be published for thirty days in some daily newspaper in the city or county where such bank is located, or in a weekly paper for four insertions before the time when such reduction shall be effected, and the last insertion of such notice shall be at least ten days before the date of reduction: *Provided*, that a statement of such reduction of capital stock, acknowledged by the officers of the bank shall be recorded and filed in the same manner as provided in section 11728 for the original articles of agreement. (Laws 1915, p. 145.)

Sec. 11761. May increase capital stock, when.—Any bank now doing business in this state under any law thereof, general or special, may at any time increase its capital stock to any amount or change the length of its corporate life or avail itself of the privileges and provisions of this article in accordance with the provisions of this article, or otherwise change its articles of agreement in any way not inconsistent with the provisions of this article, with the consent of the persons holding a majority of the stock of such bank, which consent shall be obtained at a meeting of the shareholders, called for that purpose. Upon the presentation of a petition, signed by a majority of the owners, or owners of a majority of the stock, asking for such increase or such change the board of directors shall call a meeting for the purpose of voting on such proposition, sixty days' notice of which said meeting shall be published in some daily or weekly newspaper printed and published in the city or town in which said corporation is located, the last insertion to be not more than five days before the day fixed for such meeting, giving the time, place and the amount of the proposed increase or change. If, upon a canvass of the vote at such meeting, it is ascertained that the proposition has carried, it shall be so declared by the president of the meeting, and the proceedings entered of record. When the full amount of said proposed increase has been *bona fide* subscribed and paid in cash to the board of directors of said bank or such change has been duly authorized then a statement of the proceedings, showing a compliance with the provisions of this article, the increase of capital actually subscribed and paid up or such change shall be made out, signed and verified by the affidavit of the president and countersigned by the cashier, and such statement shall be acknowledged by the president, and recorded in the office of the recorder of deeds of the county or city in which said corporation is located, and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner. Upon the filing of such certified copy the bank commissioner shall

promptly satisfy himself that there has been a compliance with all the requirements of the law relating to such increase or change and when he is so satisfied he shall issue a certificate that such bank has complied with the law made and provided for the increase of capital stock, and the amount to which the capital stock has been increased or for the change in the length of its corporate life or any other change provided for in this act. Thereupon the capital stock of such bank shall be increased by the amount specified in such certificate or the length of the corporate life of the bank shall be changed or other authorized change made as specified in such certificate. Such certificate or certified copies thereof, shall be taken in all the courts of this state as evidence of such increase. (Laws 1915, p. 145.)

Sec. 11762. Cashier, how appointed—to give bond—
tion authority.—The directors may appoint and remove a cashier or other officer or employe at pleasure. The cashier or any other officer or employe shall have no power to pledge or hypothecate any notes, bonds or other obligations received by said corporation for money loaned, until such pledge and authority shall have been given such cashier or other officer or employe by the board of directors, a written record of such proceeding shall first have been made. The president, cashier, assistant cashier, or any other officer, upon whom the power of a cashier may be imposed by the board of directors, and every officer, before entering on the duties of their office or employment, shall give good and sufficient bonds, which shall be approved by the board of directors, in writing, on the records of the bank upon which bonds no members of the board of directors shall become a surety, in such sum and with such number of sureties as the board may direct, conditioned that they will well and truly perform all the duties of their office, and that the sureties) will hold the bank harmless for any loss occasioned by any act or acts of larceny, embezzlement, fraud, dishonesty, forgery, theft, wrongful abstraction or willful misapplication committed by such officer or teller, directly or through connivance with others, until all his accounts with the bank shall have been fully settled and satisfied, such bond to be deposited in some safe place inaccessible to the maker thereof or the sureties thereon, and all acts of indorsing, pledging and hypothecating done by said cashier, or other officer or employe of said bank, without authority from the board of directors, shall be null and void. (Laws 1915, p. 146.)

The law allowing bank directors to remove a cashier is part of contract law. He could be removed despite agreement for a year's employment. *Wells v. Surety Co.*, 194 A. 389, 184 S. W. 474. Is not in violation of constitutional provision regarding the impairment of the obligations of contract. *Citizen v. Wells*, 269 Mo. 190, 190 S. W. 314. One who had not been removed a

though principally occupied with other business in another city, is authorized to bind the bank. *Bank of Senath v. Douglas*, 178 A. 664, 161 S. W. 601. Official salaries must be fixed by by-law or resolution made a matter of record. *Besch v. Mfg. Co.*, 36 A. 333.

Cashier's Powers. Note to a bank held to be an asset which could not be assigned by cashier without authority from board, but the acquiescence of a depositor in the transfer to him held not to render him in pari delicto so as to preclude him from recovering the deposit money loaned on the note. *Miles v. Macon Co. Bank*, 187 A. 230, 173 S. W. 713; *Long v. Long*, 167 A. 79, 150 S. W. 1135. Action of cashier in selling note without authority void. *Bank of Kirksville v. Sloop*, 198 A. 225, 200 S. W. 72. (Citing numerous cases.) Cashier has no power to discharge surety on note. *Daviess Co. v. Sallor*, 63 Mo. 24. Cashier of private bank may sell and assign its sureties. *Powers v. Woolfolk*, 132 A. 354, 111 S. W. 1187. As to negligence of cashier in leaving door of vault open, see *Lacks v. Bank*, 204 Mo. 455, 102 S. W. 992.

Bond, Liability Thereon. As to form and kind of bond and obligation of sureties, see *Citizens Trust Co. v. Tindle*, 272 Mo. 681, 199 S. W. 1025, and numerous cases cited therein. An increase of capital stock will not discharge sureties. *Lionberger v. Krieger*, 88 Mo. 160. See also *Savings Bank v. Hunt*, 72 Mo. 597.

Sec. 11763. Penalties for receiving deposits when institution insolvent.—No president, director, manager, cashier, or other officer or agent of any bank organized and doing business under the provisions of this article, shall receive or assent to the reception of deposits, or create or assent to the creation of any debts of such bank, after he shall have knowledge of the fact that it is insolvent or in failing circumstances. Every person violating the provisions of this section shall be individually responsible for such deposits so received, and all such debts so contracted: *Provided*, any director who may have paid more than his share of the liabilities mentioned in this section may have his proper remedy at law against such other persons as shall not have paid their full share of such liabilities; *and provided further*, that in case of the insolvency of one or more of such officers, agents or managers, the same shall be paid, for the time being, by those who are solvent, in equal proportions. (Laws 1915, p. 147.)

An officer receiving deposit when the bank is insolvent is individually liable for such deposit. *Cummings v. Winn*, 89 Mo. 51. The directors and officers of an insolvent bank become trustees of the assets for the benefit of the creditors. *Roan v. Winn*, 93 Mo. 503, 4 S. W. 736.

Sec. 11764. Liability under last preceding section—evidence of knowledge.—In all suits brought for the recovery of the amount of any deposits received, or debts so created, all officers, agents or manager of any such bank charged with so having assented to the reception of such deposits, or the creation of such debt, may be joined as defendants or proceeded against severally, and the fact that such bank was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be *prima facie* evidence of such knowledge and assent to such deposit or creation of such debt on the part of such

officer, agent or manager so charged therewith. (Laws 1915, p. 147.)

Sec. 11765. Application of this article.—This article shall extend to and may be enforced by and against the executors and administrators of such deceased officers, agents and managers. (Laws 1915, p. 148.)

Sec. 11766. Interpleader in certain actions—costs.—1. In all actions against any bank to recover for moneys on deposit therewith, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such bank, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of remedies, now or hereafter existing.

2. The funds on deposit which are the subject of such an action may remain with such bank subject to the order of the court until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such bank in accordance with the final judgment of the court; or in the discretion of the court, the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such bank shall be struck out as a party to the action, and its liability for such deposit shall cease.

3. The costs in all actions against a bank to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action. (Laws 1915, p. 148.)

The fact that the bank in interpleading did not follow steps laid down in this section is not fatal since it provides that the remedy is "in addition to, etc." *Bathgate v. Exchange Bank of Chula*, 199 A. 583, 205 S. W. 875. The fact that bank certified a check does not destroy the bank's right to require an interpleader. As to interpleading generally, see *City of Brunswick v. Peoples Savings Bank*, 194 A. 360, 190 S. W. 60; *Gee v. Leaber*, 172 A. 191, 157 S. W. 842; *Roselle v. Farmers Bank of Norborne*, 119 Mo. 84, 24 S. W. 744.

Sec. 11767. Rate of interest—effect of usury.—Every bank which becomes a member of a federal reserve bank and while it continues as such member may take, receive, reserve and charge on every loan and discount made, or upon any note, bill of exchange or other evidence of debt, interest at the rate of eight per centum per annum; and such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run. The knowingly taking, receiving, reserving, or charging a greater rate of interest shall be held and adjudged a forfeiture of

the entire interest which the note, bill of exchange or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid, the person paying the same or his legal representatives may recover twice the entire amount of the interest thus paid from the bank or banker taking or receiving the same, if such action is brought within two years from the time the excess of interest is taken. The purchase, discount or sale of a bona fide bill of exchange note or other evidence of debt payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight draft, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than eight per centum per annum. The true intent and meaning of this section is to place and continue such banks on an equality in the particulars herein referred to with the national banks organized under the act of congress, entitled "An act to provide a national currency, secured by pledges of United States bonds, and to provide for the circulation and redemption thereof," approved June the third, eighteen hundred and sixty-four. (Laws 1915, p. 148.)

Sec. 11768. Report of unclaimed deposits, dividends and interest—publication—penalty for non-compliance.—In the month of September in every fifth year, and beginning in September, 1915, and on or before the tenth day thereof, every bank shall make a written report to the bank commissioner, verified by the oaths of the president or vice-president and cashier or assistant cashier, which report shall contain a true and accurate statement of all deposits made with the bank and all dividends declared and interest accrued upon any of its stock or other evidences of indebtedness, which on the first day of August preceding such report amounted to fifty dollars or over and had remained unclaimed by any person or persons, authorized to receive the same for five years then next preceding. Such statement shall set forth the date of each such deposit, its amount and the name and last known place of residence or postoffice address of the person making it, the name of each person in whose favor and the time when any such dividend may have been declared or any such interest may have accrued, its amount, and upon what number of shares or upon what amount of stock or other evidences of indebtedness of such bank, it was declared or accrued. In case any such bank shall at said date have held no such unclaimed deposits, dividends or interest, it shall at the time above specified make a written report to the commissioner so stating, which report shall be verified as herein above provided. No deposits, dividends or interest shall be deemed unclaimed within

the meaning of this section if it appears from the books of the bank or from other written evidence on file with the bank that the person or persons authorized to receive them have knowledge thereof. Every such bank which reports any unclaimed deposits, dividends or interest under the provisions of this section shall cause to be published once in each week for two successive weeks in a newspaper designated by the commissioner published in the county and in the village or city in which such bank is located, if there be a newspaper published therein, or in the city of St. Louis if the bank is located there, a true copy of such report, and shall file with the commissioner on or before the first day of October thereafter proof by affidavit of such publication. The expense of such publication shall be paid by the bank, but if, on or before the first day of August in that year, the bank shall have mailed, postage prepaid, to each person authorized to receive any such unclaimed deposit, dividend or interest, at his last known place of residence or postoffice address, a statement showing the amount to which such person is entitled and requesting written acknowledgment thereof, the bank may reimburse itself for such expense by deducting the amount thereof from the sums due any such person or persons who shall not have made written acknowledgment before the filing of such report with the commissioner, in the proportion that each such sum bears to the aggregate thereof. Any such bank failing to make any report or to file any affidavit of publication required by this section shall forfeit to the state the sum of one hundred dollars for each week such report or the filing of such affidavit of publication shall be so delayed or withheld, unless the time therefor shall have been extended by the commissioner. (Laws 1915, p. 149.)

Sec. 11769. Liability of bank for assessments by commissioner.—When the commissioner, pursuant to the powers conferred on him by article one of this chapter shall have levied any assessment upon any bank and shall have duly notified such bank of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such bank to the commissioner. (Laws 1915, p. 150.)

Sec. 11770. Preservation of books and records of bank.—Every bank shall preserve all its records of final entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon. (Laws 1915, p. 150.)

Sec. 11771. Change from state to national bank.—Whenever any bank shall have become a corporation for carrying on the business of banking under the laws of the United States, it

shall notify the bank commissioner of this state of such fact, and shall file with him a copy of its authorization as a national banking association certified by the comptroller of the currency. It shall thereupon cease to be a corporation under the laws of this state, except that for the term of three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and of enabling it to close its concerns, and to dispose of and convey its property. Such change from a state to a national bank shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national banking association, or any tax imposed by the laws of this state up to the date of its becoming such national banking association in proportion to the time which has elapsed since the next preceding payment therefor, or any assessment, penalty or forfeiture imposed or incurred under the laws of this state up to the date of its becoming a national banking association. (Laws 1915, p. 150.)

Sec. 11772. Change from state bank to trust company.—Any bank may become a trust company with all the powers and subject to all the obligations and duties of trust companies organized under the provisions of article three of this chapter. A bank desiring to become a trust company shall proceed in the following manner:

1. It shall call a meeting of its stockholders upon not less than twenty days' written notice to each stockholder, which notice shall be served personally or by mail, postage prepaid, directed to each stockholder at his last known postoffice address, and shall contain a statement of the purpose for which such meeting is called. Proof by affidavit of the due service of such notice shall be filed in the office of the bank at or before the time of such meeting.

2. At the meeting so called the stockholders of such bank may, by a vote of at least two-thirds of the entire capital stock, direct that such bank shall be transformed into a trust company. In the event that such action is taken by the prescribed vote, a resolution may be adopted fixing a future date certain upon which such state bank shall be transformed into a trust company and directing not less than five nor more than thirty of the stockholders of such bank, who shall be designated by name in such resolution, to proceed with the organization of such trust company. Such designated stockholders shall proceed in all respects as is provided by law for other individuals in incorporating a trust company, except that the articles of agreement may provide that instead of the capital stock being paid up in lawful money the same may be paid up by an assignment of the assets of the state

bank about to dissolve, such assignment to take effect at the aforesaid future date certain, and the commissioner may allow such assignment to be accepted instead of cash, if the incorporators shall have certified in the articles of agreement that the net value of such assigned assets is equal to at least the full amount of the stock of such proposed trust company, and the commissioner, as the result of an examination by himself, his deputies or his examiners, is satisfied that such assets are of such value. (Laws 1915, p. 150.)

Sec. 11773. Prohibitions against encroachments upon certain powers of banks.—No person unauthorized by law shall subscribe to or become a member of, or be in any way interested in any association, institution or company formed or to be formed for the purpose of issuing notes or other evidences of debt to be loaned or put in circulation as money; nor shall any such person subscribe to or become in any way interested in any bank or fund created or to be created for the like purposes or either of them. No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, making discounts, or issuing notes or other evidences of debt to be loaned or put into circulation as money. All notes and other securities for the payment of any money or the delivery of any property, made or given to any such association, institution or company, or made or given to secure the payment of any money loaned or discounted by any corporation or its officers, contrary to the provisions of this section shall be void. No person, association of persons or corporation, unless expressly authorized by law, shall keep any office for the purpose of issuing any evidences of debt, to be loaned or put in circulation as money; nor shall they issue any bills or promissory notes or other evidences of debt for the purpose of loaning them or putting them in circulation as money, unless thereto specially authorized by law. Every person, and every corporation, director, agent, officer or member thereof, who shall violate any provision of this section, directly or indirectly or assent to such violation, shall forfeit one thousand dollars to the state. (Laws 1915, p. 151.)

Sec. 11774. Use of sign, or words indicating bank by unauthorized persons prohibited.—No person, except a national bank, a federal reserve bank, a private banker, or a corporation duly authorized by the commissioner to transact a banking business in this state, shall make use of any office sign at the place where such business is transacted having thereon any artificial or corporate name, or other words indicating that such place or office is the

place or office of a bank; nor shall any such person or persons make use of or circulate any letterheads, billheads, blank forms, notes, receipts, certificates, circulars, or any written or printed or partly written and partly printed paper whatever, having thereon any artificial or corporate name, or other word or words, indicating that such business is the business of a bank. Every person violating this provision shall forfeit the sum of one thousand dollars to the state. (Laws 1915, p. 152.)

Sec. 11775. Conditions to be complied with by foreign banking corporations applying for license.—Every foreign banking corporation before being licensed by the bank commissioner to transact in this state the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making sterling or other loans, or any part of such business, or before maintaining in this state any agency for carrying on such business or any part thereof, shall subscribe and acknowledge and submit to the bank commissioner at his office, a separate application certificate in duplicate for each agency which such foreign corporation proposes to establish in this state, which shall specifically state:

1. The name of such foreign banking corporation.
2. The place where its business is to be transacted in this state, and the name of the agent or agents through whom such business is to be transacted.
3. The amount of its capital actually paid in cash and the amount subscribed for and unpaid.
4. The actual value of the assets of such corporation, which must be at least two hundred and fifty thousand dollars in excess of its liabilities; and a complete and detailed statement of its financial condition as of a date within sixty days prior to the date of such application.

At the time such application certificate is submitted to the commissioner, such corporation shall also submit a duly exemplified copy of its charter and a verified copy of its by-laws, or the equivalent thereof. (Laws 1915, p. 152.)

Sec. 11776. When foreign banking corporation may transact business in this state.—No foreign banking corporation, other than a bank organized under the laws of the United States, shall transact in this state the business of buying, selling or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making sterling or other loans or transacting any part of such business, or maintaining in this state

any agency for carrying on such business, or any part thereof, unless such corporations shall have:

1. Been authorized by its charter to carry on such business and shall have complied with the laws of the state or country under which it is incorporated.

2. Furnish to the commissioner such proof as to the nature and character of its business and as to its financial condition as he may require.

3. Designated the bank commissioner by a duly executed instrument in writing, its true and lawful attorney, upon whom all process in any action or proceeding by any resident of the state against it may be served with the same effect as if it were a domestic corporation and had been lawfully served with process within the state.

4. Paid to the bank commissioner a license fee of two hundred and fifty dollars.

5. Received a license duly issued to it by the commissioner as provided in section 11685.

This section shall not be construed to prohibit foreign banking corporations which do not maintain an office in this state for the transaction of business from making loans in this state secured by mortgages on real property, nor from accepting assignments of mortgages covering real property situated in this state, nor from making loans through correspondents which are engaged in the business of a bank or trust company in this state under the laws of the state. (Laws 1915, p. 153.)

Sec. 11777. Rights and privileges of foreign banking corporation under license—effect of revocation.—When the commissioner shall have issued a license to any such banking corporation, it may engage in the business specified in the immediately preceding section of this article at the location specified in such license for a period of one year from the date of such license; and such license may, in the discretion of the commissioner, be reissued from year to year upon the payment by such foreign banking corporation of the sum of two hundred and fifty dollars upon each date that such license is reissued. No such license shall be transferable or assignable and shall be at all times conspicuously displayed in the place of business specified therein. In the event that such license shall have been revoked by the commissioner, as provided in section 11687, it shall be surrendered to the commissioner within twenty-four hours after such corporation has received written notice of such revocation. Whenever the commissioner shall have revoked any such license and shall have taken the action to make such revocation effective specified in section 11687, all the rights and privileges of such foreign cor-

porations to transact business in this state shall forthwith cease and determine. (Laws 1915, p. 153.)

Sec. 11778. Reports of foreign banking corporations—penalties.—Every foreign banking corporation licensed by the bank commissioner to engage in business in this state, shall at such time and in such form as the commissioner shall prescribe, make written report to the commissioner under the oath of one of its officers, managers or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the commissioner shall prescribe. If any such corporation shall fail to make any such report as directed by the commissioner it shall be subject to the penalties prescribed by section 11756, and any false statement contained in any such report or in any other sworn statement made to the bank commissioner by such corporation in pursuance of the provisions of this article shall constitute perjury. Nothing herein contained shall be deemed to modify the prohibition of section 11773. (Laws 1915, p. 154.)

Sec. 11779. Deposits of minors and trust deposits and deposits in the names of more than one person.—When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the bank. When any deposit shall be made by any person describing himself in making such deposit as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to the bank in the event of the death of the person so described as trustee, such deposit or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was thus stated to have been made. When a deposit shall have been made by any person in the name of such depositor and another person and in form to be paid to either, or the survivor of them, such deposit thereupon and any additions thereto made by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the life time of both, or to the survivor after the death of one of them; and such payment and the receipt or acquittance of the one to whom such payment is made, shall be a valid and sufficient re-

lease and discharge to said bank, for all payments made on account of such deposit prior to the receipt by said bank of notice in writing signed by any one of such joint tenants, not to pay such deposit in accordance with the terms thereof. (Laws 1915, p. 154.)

Sec. 11780. Special remedies applicable to banks doing a safe deposit business.—Every bank doing a safe deposit business shall be entitled to the following special remedies in enforcing the liability of depositors and of renters or lessees of boxes:

1. Whenever any bank doing a safe deposit business shall have received personal property upon deposit, as bailee, and shall have issued a receipt therefor, it shall be deemed a warehouseman as to such property, and all existing statutes and laws affecting warehousemen shall apply to such deposits, and the corporation shall have a lien on such deposit or the proceeds thereof to the same extent and with the same effect, and enforceable in the same manner, as now provided by law with reference to "warehousemen."

2. If the amount due for the rental of any safe or box in the vaults of any bank shall not have been paid for one year, such bank may, at the expiration thereof, send to the person or persons, partnership or corporation in whose name such safe or box stands on its books a notice in writing in a securely closed postpaid registered letter, directed to such renter or lessee at his, their or its postoffice address, as recorded upon the books of the bank, notifying such renter or lessee that if the amount due for the rental of such safe or box shall not be paid within thirty days from date, the bank will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of the general safes or boxes of the bank.

Upon the expiration of thirty days from the date of mailing such notice, and the failure within said period of time of the renter or lessee in whose name the safe or box stands on the books of the bank to pay the amount due for the rental thereof to the date of notice the bank may, in the presence of a notary public and of its president or cashier, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed up by such notary public in a package, upon which the notary public shall distinctly mark the name of the renter or lessee in whose name the safe or box stood on the books of the bank, and the date of removal of the property, and when such package has been so marked for identification by the notary public, it shall, in the presence of the president or cashier of the bank be placed by the notary public in one of the general safes or boxes of the bank, at a rental not to exceed the original rental of the safe which was opened, and shall remain in such general safe or box for

a period of not less than two years, unless sooner removed by the owner thereof, and the notary public shall thereupon file with the bank a certificate under seal, which shall fully set out the date of the opening of such safe or box, the name of the renter or lessee in whose name it stood and a list of the contents, if any. A copy of such certificate shall within ten days thereafter be mailed to the renter or lessee in whose name the safe or box so opened stood on the books of the bank, at his, their or its last known postoffice address, in a securely closed postpaid, registered letter, together with a notice that the contents will be kept, at the expense of such renter or lessee, in a general safe or box in the vaults of the bank for a period of not less than two years. At any time after the mailing of such certificate and notice, and before the expiration of two years, such renter or lessee may require the delivery of the contents of the safe as shown by said certificate, upon the payment of all rentals due at the time of opening of the safe or box, the cost of opening the box, the fees of the notary public for issuing his certificate thereon, and the payment of all further charges accrued during the period the contents remained in the general safe or box of the bank. After the expiration of two years from the time of mailing the certificate herein provided for, the bank shall mail in a securely closed postpaid registered letter, addressed to such renter or lessee at his, their or its last known post-office address, a notice stating that two years have elapsed since the opening of the safe or box and the mailing of the certificate thereof, and that the bank will sell all the property or articles of value set out in said certificate, at a time and place stated in such notice, not less than thirty days after the time of mailing such notice, and stating the amount which shall have then been due for rental up to the time of opening such safe, the cost of opening thereof, and the further cost of safe-keeping all of its contents for the period since the opening of the safe or box. Unless such renter or lessee shall pay on or before the day mentioned all said sums, and all the charges accruing to the time of payment, including advertising, the bank may sell all the property or articles of value set out in said certificate, at public auction, at the time and place stated in said notice, provided a notice of the time and place of sale has been published once within ten days prior to the sale, in a newspaper, published in the place where the sale is held. From the proceeds of the sale, the bank shall deduct all its charges as stated in said notice, together with any further charges that shall have accrued since the mailing thereof, including reasonable expenses for notices, advertising and sale. The balance if any, of such proceeds shall be held as a special deposit by the bank. The bank shall file with such deposit a certificate stating the name and last known place of residence of the owner of the

property sold, the articles sold, the price obtained therefor, and showing that the notices herein required were duly mailed and that the sale was advertised as required herein. The bank holding such balance shall credit the same to the owner of the property, and pay the same to such owner, his, their or its assignee or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such bank for a period of five years, unclaimed by the person, partnership or corporation legally entitled thereto, it shall be treated as an unclaimed deposit. Whenever the contents of any such safe or box, so opened, shall consist either wholly or in part, of documents or letters or other papers of a private nature, such documents, letters or papers shall not be sold, but shall be retained by the bank for a period of ten years from the time of the opening of the box, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of an officer of the bank and a notary public not an officer or employe of the bank. The provisions of this section do not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of a bank against the person in whose name such safe or box stood, nor bar the right of a bank to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the property deposited with it. (Laws 1915, p. 155.)

Sec. 11781. Private bankers defined.—Private bankers are declared to be those who carry on the business of banking by receiving money on deposit, with or without interest, by buying and selling bills of exchange, promissory notes, gold or silver coin, bullion, uncurrent money, bonds or stocks, or other securities, and of loaning money, without being incorporated. (Laws 1915; p. 157.)

The assets of a private bank are distinct from those of the owner. State ex rel. Barker v. Sage, 267 Mo. 493, 184 S. W. 984.

Sec. 11782. Requirements for private banker.—No person or company of persons shall engage in the business of banking as private bankers without a paid-up capital of not less than ten thousand dollars, and if said banking business is to be carried on in a city having a population of one hundred and fifty thousand inhabitants or more, then without a paid-up capital of not less than one hundred thousand dollars, nor until he or they shall have made a statement, subscribed and sworn to as correct and true before a notary public by each person connected with such business as owner or partner, setting forth: First, the names and places of residence of all persons interested in the business, all of whom shall be residents of this state, and the amount of capital invested; and second, the name in which the business is to be conducted and the place at which it is to be carried on; which

statement shall be acknowledged, recorded in the office of the recorder of deeds of the county in which the bank is to be located, and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner: *Provided*, that hereafter no new private bank shall be established. (Laws 1915, p. 157.)

Where an individual banker dies solvent and sole owner of the assets of the bank, the probate court has sole jurisdiction. *In re Purl's estate*, 147 A. 105, 125 S. W. 849. See *State ex rel. Barker v. Sage*, 267 Mo. 493, 184 S. W. 984.

Since the act of 1915 no new private banks could be established in this state. At the present time there are only four private banks in the state.

Sec. 11783. Private bank not to make loan on personal security of owner in excess of ten per cent of paid up capital.—No private bank or banker in this state shall make any loan or discount on account of the personal security or obligation of the proprietor, owner or partner in such private bank in excess of ten per cent of the paid up capital and surplus of such private bank or banker. For any violation of the provisions of this section, the bank commissioner shall have authority, in his discretion, to make application for the appointment of a receiver for such private bank or banker, as now provided by law in case of insolvent banks and trust companies. (Laws 1915, p. 157.)

See notes to two preceding sections.

Sec. 11784. Funds of private bank not to be used in other business—twenty per cent of net profits to be placed in surplus.—No private banker shall employ any part of his capital, or any funds deposited with or borrowed by him, in dealing or trading in, buying or selling lands, goods, chattels, wares or merchandise, but he may sell and dispose of all kinds of property which may necessarily come into his possession in the collection of his loans or discounts. Nor shall any such banker use or employ his capital or funds deposited with or borrowed by him in any other manner than banks are by this article permitted, or loan a greater amount to any person or loan any sum whatever, except upon like security as is required to be taken by banks. Neither shall the profits of such private bank be distributed to the owners thereof without first setting apart to surplus accounts at least twenty per cent of the net profits each year until the surplus equals twenty per cent of the capital, and said surplus shall not be diminished except for the payment of any losses which may occur: *Provided*, if there are undivided profits, these shall first be used in payment of such losses. (Laws 1915, p. 158.)

Assets of private banks are to be applied first to payment of claims against bank and, second, to payment of individual creditors of owner. *State ex rel. Barker v. Sage*, 267 Mo. 493, 184 S. W. 984. Shipping cattle in name of bank in order that the proceeds may be used to pay debt of the owner is not in violation of this section. *Farmers Bank v. Ry.*, 119 A. 1, 95 S. W. 286; *Griffin v. Ry.*, 115 A. 549, 91 S. W. 1015.

Sec. 11785. Application of and penalty for violation of provisions of this article.—All the provisions of this article shall, so far as the same are applicable, apply to all private bankers doing business in this state; and any private banker who shall fail to make and file the statement required by this article of banks incorporated under the provisions of this article, or so much thereof as may be required by the bank commissioner, or shall fail or refuse to make or render any other report or statement required by the banking laws of this state, or who shall, willfully and corruptly, make any such statement falsely, or who shall violate any of the provisions of this article, he or they, and each of them, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, upon information or indictment, shall be punished by a fine, for each offense, not exceeding five thousand dollars nor less than five hundred dollars, or by imprisonment not less than one nor more than twelve months in the city or county jail, or by both such fine and imprisonment. The cashier of each private bank shall give bond to the state of Missouri, for such sum, and conditioned, as may be required by the commissioner, which shall be approved by the commissioner, and filed in his office. (Laws 1915, p. 158.)

Sec. 11786. Private banker not required to pay additional tax or license.—No private banker or banking institution, after having made, recorded and filed the statement required by this article, shall be required to pay any license or tax not required of banks. (Laws 1915, p. 158.)

Sec. 11787. Moneys forfeited—to whom paid.—All moneys forfeited under the provisions of any section of this article, when recovered, shall be paid into the state treasury for the use of the state banking department, where not otherwise provided by the Constitution. (Laws 1915, p. 158.)

Sec. 11788. Definitions of terms used in chapter.—Surplus. The term "surplus," when used in this article, means the excess of assets over liabilities, including liability to stockholders.

Surplus fund. The term, "surplus fund," when used in this article, means a fund created pursuant to the provisions of this article by a bank from its net earnings or undivided profits, which to the amount specified in this article is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as any such corporation has undivided profits.

Total profits. The term, "total profits," when used in this article, means the total amount of undistributed net earnings of any corporation to which this article is applicable from the date of its organization, including such portions of its surplus fund or

guaranty fund as have been derived from net earnings or from undivided profits.

Undivided profits. The term, "undivided profits," when used in this article, means the credit balance of the profit and loss account of any corporation to which this article is applicable.

Net earnings. The term, "net earnings," when used in this article, means the excess of the gross earnings of any corporation to which this article is applicable over expenses and losses chargeable against such earnings during any dividend period.

Dividend period. The term, "dividend period," when used in this article, means the period from the date as of which the last dividend of any corporation to which this article is applicable was declared to the date selected for the declaration of the next dividend; or the period from the date when its corporate existence began to the date as of which the first dividend is declared.

Time deposits. The term, "time deposits," when used in this article, means all deposits the payment of which cannot legally be required within thirty days.

Demand deposits. The term, "demand deposits," when used in this article, means deposits, payment of which can legally be required within thirty days.

Aggregate demand deposits. The term, "aggregate demand deposits," when used in this article, means the deposit against which reserves must be maintained, by banks, and private bankers and includes total deposits, all amounts due to banks, bankers, trust companies and savings banks, the amount due on certified and cashier's checks, and for unpaid dividends, less the following items:

1. Total time deposits.
2. The amounts due it on demand from banks, bankers and trust companies, other than its reserve depositaries, including foreign exchange balances credited to it and subject to draft.
3. The excess due it from reserve depositaries over the amount required to maintain its total reserves.

Reserves on hand. The term, "reserves on hand," when used in this article, means the reserves against deposits kept in the vault of any individual or corporation pursuant to the provisions of this chapter.

Reserves on deposit. The term, "reserves on deposit," when used in this article, means the reserves against deposits maintained by any individual or corporation pursuant to this article in reserve depositaries, or in a federal reserve bank of which such corporation is a member, and not in excess of the amount authorized by this article.

Total reserves. The term, "total reserves," when used in this article, means the aggregate of reserves on hand and reserves on deposit maintained pursuant to the provisions of this article.

Reserve depository. The term, "reserve depository," when used in this article, means a bank, trust company or banking corporation approved by the bank commissioner as a depository for reserves on deposit.

Stockholder. The term, "stockholder," when used in this article, unless otherwise qualified, means a person who appears by the books of a stock corporation to be the owner and holder of one or more shares of the stock of such corporation.

Population. The term, "population," when used in this article, means population as determined by the last state or federal enumeration; or when used in connection with the words "unincorporated village," as determined by the bank commissioner from the best available sources of information.

Assessments. Wherever in this article the commissioner is authorized to levy an assessment against any corporation, private banker or other person because of its, or his failure, to do any act or because of the doing of any act by such corporation, private banker or other person, the word "assessment" shall be construed as synonymous with the word "forfeiture." (Laws 1915, p. 159.)

ARTICLE III.

TRUST COMPANIES.

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Sec. 11789. Who may be incorporated.—When authorized by the bank commissioner as provided in section 11792, any five or more persons who shall have associated themselves by articles of agreement, in writing, as provided by law for any of the purposes included under section 11799, may be incorporated under any name or title designating such business. (Laws 1915, p. 161.)

Sec. 11790. Articles of agreement shall state, what.—The articles of agreement mentioned in this article shall set out:

1. The corporate name of the proposed corporation, which shall not be the name of any corporation heretofore incorporated in this state for similar purposes, or an imitation of such name.
2. The name of the city or town and county in this state in which the corporation is to be located.
3. The amount of the capital stock of the corporation, the number of shares into which it is divided, and the par value thereof; that the same has been subscribed in good faith and all thereof actually paid up in lawful money of the United States and is in the custody of the persons named as the first board of directors or managers.
4. The names and places of residence of the several shareholders and the number of shares subscribed by each.
5. The number of directors or managers, and the names of those agreed upon for the first year.

6. The purposes for which the corporation is formed: The articles of agreement may designate the number of directors necessary to constitute a quorum, and may provide for the number of years the corporation is to continue, which shall not exceed fifty years, or may provide that the existence of the corporation shall continue until the corporation shall be dissolved by consent of the stockholders or by proceedings instituted by the state under any statute now in force or hereafter enacted. (Laws 1915, p. 161.)

Sec. 11791. To be signed, recorded and filed in office of bank commissioner.—The articles of agreement shall be signed and acknowledged by the parties thereto, and recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located; and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner. (Laws 1915, p. 162.)

Sec. 11792. Examination and certificates as to character and capital.—When any trust company shall have filed with the bank commissioner a certified copy of its articles of agreement and shall have paid all incorporation and other fees in full, as required by law, and shall have provided the cash required by law, the commissioner shall, before such trust company shall complete its incorporation, examine or cause an examination to be made, in order to ascertain whether the requisite capital of such trust company has been subscribed in good faith and paid in actual cash and is ready for use in the transaction of business of the proposed trust company, and whether the character, responsibility and general fitness of the persons named in such articles of agreement are such as to command confidence and warrant belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter. In case the commissioner shall find all the provisions of the law have been complied with and shall have satisfied himself by such investigation as to the facts as above provided, he shall grant a certificate setting forth that such corporation has been duly organized and the amount of its capital subscribed and paid up in full. Such certificate shall be recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located, and, such certificate, so recorded, or certified copies thereof, shall be taken in all the courts of this state as evidence of such incorporation; and the existence of such corporation shall continue for the period limited in its articles of agreement, if there fixed, and if not there fixed, then until the corporation is dissolved by consent of its stockholders or until its corporate existence ends pursuant to the laws of this state.

In case the commissioner shall not be satisfied, as the result of such examination, that the character, responsibility and general fitness of the persons named in such articles of agreement is up to the standard above provided, and on that account shall refuse to grant the certificate of incorporation, he shall forthwith give notice thereof to the proposed incorporators from whom such articles of agreement were received; who, if they so desire, may within ten days thereafter appeal from such refusal to a board composed of the governor, the attorney-general and the state treasurer, which board shall within twenty days thereafter finally decide the matter, and the commissioner shall act in accordance with such decision. Such board may prescribe rules and regulations for the proceedings in connection with such appeal. (Laws 1915, p. 162.)

Sec. 11793. Cash capital required.—The cash capital of such corporation shall amount to not less than:

(a) \$50,000, if the place where its business is to be transacted is an unincorporated or incorporated village or city, the population of which does not exceed twenty-five thousand.

(b) \$100,000, if the place where its business is to be transacted is a city, the population of which exceeds twenty-five thousand but does not exceed one hundred thousand.

(c) \$200,000, if the place where its business is to be transacted is a city, the population of which exceeds one hundred thousand.

Provided, however, that any trust company now existing, the capital of which is not equal to that limitation required of a trust company in its location, may continue to do business under its present capital; provided that, until its capital and surplus fund shall equal twenty per centum more than the minimum of capital required for a trust company in its location, one-tenth of its net earnings at the close of each dividend period, as provided in section 11825, shall be credited to the surplus fund, and no such trust company shall declare, credit or pay any dividend for any dividend period to its stockholders until it shall have made such credit to its surplus fund for that period. (Laws 1915, p. 163.)

Sec. 11794. Capital stock to be divided into shares—vendor and vendee liable, when.—The capital stock of such corporation shall be divided into shares of not less than one hundred dollars each. If any shareholder sell or transfer his shares, or any number thereof, in any such corporation now existing before they shall have been fully paid, the vendor as well as the vendee shall be liable, the former for one year after notice to the corporation of such sale or transfer, as indorser, for whatever is still due on such shares. (Laws 1915, p. 163.)

Sec. 11795. Prohibition against receiving commissions for organizing trust company or securing subscriptions to stock.—No individual, partnership, unincorporated association or corporation shall, directly or indirectly, receive or contract to receive any commission, compensation, bonus, right or privilege of any kind for organizing any trust company in this state, or for securing a subscription to the original capital stock or surplus of any trust company in this state, or to any increase thereof: *Provided*, that this section shall not be construed as prohibiting an attorney at law from receiving compensation for legal services in connection therewith. Each and every individual, partnership, unincorporated association or corporation violating the provisions of this section shall forfeit to the state \$100 for each and every such violation, and in addition thereto double the amount of such commission, compensation or bonus. (Laws 1915, p. 163.)

Sec. 11796. Capital stock to be paid up, when—how collected.—The remaining unpaid portion of the subscribed capital stock of a trust company now in existence provided for in the articles of agreement shall be paid up in cash at such times and in such amounts as the board of directors may require. In case any shareholder shall refuse payment, the debt may be collected by suit at law: *Provided*, that the board of directors may, at their discretion, forfeit as many of the shares of such delinquent shareholder as shall be the equivalent of the sum due and unpaid on such shares, and dispose of such forfeited shares to any one willing to purchase them: *Provided, furthermore*, that no installment on shares shall be considered due and payable until notice to that effect shall have been given by publication for two weeks in some newspaper published in the county or city where such corporation is located, or in writing, personally served on the party required to pay: *Provided*, that no trust company, the capital stock of which is not fully paid, shall in any way advertise to the public its authorized or unpaid subscribed capital, and every trust company and any officer thereof violating the provisions hereof shall be punished by a fine of one hundred dollars, and a further fine of fifty dollars per day for each day such violation continues, after written notice of such violation from the bank commissioner. (Laws 1915, p. 164.)

Sec. 11797. National bank may become trust company—procedure and effect thereof.—Any banking corporation organized under the laws of the United States and having its place of business in this state may become an incorporated trust company of this state with all the powers and subject to all the obligations and duties of trust companies organized under the provisions of this article; provided such banking corporation has authority by

virtue of any law of the United States, to dissolve its organization as a national banking corporation. A national banking corporation desiring to become such an incorporated trust company of this state shall proceed in the following manner:

1. It shall take such action, in the manner prescribed or authorized by the laws of the United States, as shall make its dissolution as a national banking corporation effective at a future date certain.

2. Its stockholders shall proceed in all respects as is provided by law for other individuals in incorporating a trust company, except that the articles of agreement may provide that instead of the capital stock being paid up in lawful money, the same may be paid up by an assignment of the assets of the national banking corporation about to dissolve, such assignment to take effect at the aforesaid future date certain, and the commissioner may allow such assignment to be accepted instead of cash, if the incorporators shall have certified in the articles of agreement that the net value of such assigned assets is equal to at least the full amount of the stock of such proposed trust company, and the commissioner, as the result of an examination by himself, his deputies or his examiners, is satisfied that such assets are of such value. (Laws 1915, p. 164.)

Sec. 11798. Branch offices.—Any trust company possessing a capital and surplus of \$1,000,000 or more may file application with the commissioner, upon such conditions and under such regulations as may be prescribed by the said commissioner, for the purpose of securing authority to establish branches in foreign countries or dependencies of the United States for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States. Such application shall specify, in addition to the name and capital of the trust company filing it, the place or places where the trust company operations proposed are to be carried on, and the amount of capital set aside for the conduct of its foreign business. The commissioner shall have power to approve or to reject such application if, in his judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient. Every trust company which shall receive authority to establish foreign branches shall be required at all times to furnish information concerning the condition of such branches to the commissioner upon demand, and the commissioner may order special examinations of the said foreign branches at such time or times as he may deem best. Every such trust company shall conduct the accounts of each foreign branch independently

of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accruing at each branch as a separate item. (Laws 1915, p. 165.)

Sec. 11799. Powers and purposes of corporations created under this article.—Corporations may be created under this article for any one or more of the following purposes:

1. To receive money in trust and to accumulate the same at such rate of interest as may be obtained or agreed upon, or to allow such interest thereon as may be prescribed or agreed, and to receive money on deposit, with or without allowing interest thereon, not exceeding in any case the legal rate: *Provided, however*, that no trust company shall maintain in this state a branch trust company or receive deposits or pay checks except in its own banking house.

2. To receive upon deposit for safe-keeping personal property of every description; to guarantee special deposits, and to own or control a safety vault and rent the boxes therein.

3. To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or any corporation, and act as assignee, receiver, trustee and depository, and to accept and execute all such trusts and perform such duties of every description as may be committed or transferred to them by order, judgment or decree of any of the courts of record of this state or other state, or of the United States.

4. To take, accept and hold, by the order, judgment or decree of any court of this state, or of any other state, or of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all such legal and lawful trusts in regard to the same, upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by such order, judgment, decree, gift, grant, assignment, transfer, devise or bequest.

5. To execute as principal or surety, any bond or bonds required by law to be given in any proceeding, in law or equity, in any of the courts of this state or other states, or of the United States.

6. To act as agent or attorney in fact for any person or corporation in the management and control of real or personal property, and the sale or conveyance of same, and for the investment of money.

7. To act as the fiscal or transfer agent of the United States, of any state, municipality, body politic or corporation and in such capacity to receive and disburse money, to transfer, register and

countersign certificates of stock, bonds or other evidences of indebtedness; and to act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

8. To accept from and execute trusts for married women in respect to their separate property, whether real or personal, and act as agent for them in the management of such property.

9. To act as executor and trustee under last will, or as administrator with or without the will annexed, of the estate of any deceased person, or as guardian or curator of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary, under the appointment of any court of record having jurisdiction of the person or estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict.

10. To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; buy and sell coin and bullion, and loan money upon real estate or personal property, and upon collateral or personal security, at a rate of interest not exceeding that allowed by law; and, to execute and issue its notes and debentures payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor, which debentures and notes may be issued to an amount not exceeding, in the aggregate, ten times the amount paid up on the capital stock and surplus of the company issuing the same, and shall in no case exceed the amount of first mortgages pledged to secure their payment.

11. To buy, invest in and sell all kinds of government, state, municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks or other investment securities.

12. To accept for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one year: *Provided*, that no trust company shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid up and unimpaired capital stock and surplus fund, except with the approval of the bank commissioner under such general regulations as to amount of acceptances as the commissioner may prescribe.

13. To purchase and hold, for the purpose of becoming a member of a federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such reserve bank, pursuant to an act of congress, approved December twenty-three, nineteen hundred and thirteen, entitled the "Federal reserve act," and any amendments thereto; to become a member of such federal reserve bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any

such member by the federal reserve act. Such trust company and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to trust companies.

14. To purchase, hold or convey real property for the following purposes:

(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business, from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be conveyed to it in satisfaction or part satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or liens held by it. (Laws 1915, p. 165.)

A trust company may acquire negotiable paper payable to an officer of the company and endorsed over by him. *Denny et al. v. Jefferson Co.*, 272 Mo. 436, 199 S. W. 250. There seems to be no legal obstacle to the exercise by trust companies of all the functions of ordinary banks as to receiving and paying out deposits of money. *Stone v. Trust Co.*, 150 A. 331, 130 S. W. 825; *State v. Lincoln Trust Co.*, 144 Mo. 562, 46 S. W. 593. A trust company may not act as promoter of a corporation, and a contract so to do is *ultra vires*. *Millinery Co. v. Mississippi Valley Trust Co.*, 251 Mo. 553, 158 S. W. 359. A trust company is not authorized to purchase controlling interest in stock of another bank. *State ex rel. Hadley v. Bankers Trust Co.*, 157 A. 557, 138 S. W. 669. A trust company with whom the receiver of a bank deposited the funds of the bank cannot claim that the deposit was an indemnity against its possible liability on the receiver's bond. *Stone v. St. Louis Union Trust Co.*, 183 A. 261, 166 S. W. 1091. Trust Company may execute, as surety, attachment bonds. *Steppacher Co. v. McClure*, 75 A. 135. They also have power to buy and sell bills of exchange, *State ex inf. v. Trust Co.*, 144 Mo. 562, 46 S. W. 593. Board of directors and majority of stockholders held without power to trade trust company's property and good will for stock of title guaranty company, thus in effect dissolving the trust company. *Luehrmann v. Lincoln Trust and Title Co.*, 192 S. W. 1026.

Sec. 11800. Power to certify and guarantee titles continued in special cases.—Every trust company which at the time this act takes effect* lawfully possesses and exercises the power to certify and guarantee titles to real estate, and which within ninety days after this act takes effect shall, under oath of its president and by resolution of its board of directors, certify that it is actually engaged in the exercise of such power, shall continue to exercise such power, but no other trust company shall hereafter have or exercise such power: *Provided, however*, that the bank commissioner shall be required, within six months after this act takes effect, to investigate and verify the truth of the said oath of the president and resolution of said board of directors; and his certificate with reference thereto shall be recorded in the office of the recorder of the county or city in which said trust company is located, and a certified copy thereof filed in

*This act took effect March 25, 1915.

the office of the bank commissioner, whereupon his conclusion shall be taken as final. (Laws 1915, p. 167.)

Sec. 11801. Provisions relating to appointment of and exercise of powers as executor and in other fiduciary capacities.—1. When any trust company organized under the laws of this state shall have been nominated as executor of the last will of any deceased person, the court or officer authorized under the law of this state to grant letters testamentary thereon shall, upon proper application, grant letters testamentary thereon to such trust company or to its successor by merger.

2. When application is made for the appointment of an administrator with will annexed on the estate of any deceased person, and there is no person entitled to such letters, or if there be one so entitled then, on the application of any such person, the court or officer making the appointment may grant letters of administration with will annexed to any trust company.

3. Any trust company may be appointed guardian, curator, trustee, administrator with or without will annexed, receiver, assignee, or in any other fiduciary capacity, in the manner now provided by law for appointment of individuals to any such office. On the application of any natural person acting in any such office, or on the application of any natural persons acting jointly in any such office, any trust company may be appointed by the court or officer, having jurisdiction in the place and stead of any such person or persons; or on the application of any such person or persons any trust company may be appointed to any such office to act jointly with any such person or persons theretofore appointed, or appointed at the same time, provided such appointment shall not increase the compensation to be paid the joint fiduciaries over the amount under the law payable to a fiduciary acting alone.

4. Any natural person or persons heretofore or hereafter appointed as guardian, curator, trustee, administrator with or without will annexed, receiver, assignee, or in any other fiduciary capacity, desiring to have their bond under such office reduced, or desiring to be appointed under a reduced bond, such person or persons may apply to the court to have his appointment put or made under such limitations of powers and upon such terms and conditions as to the deposit of assets by such person or persons with any trust company, under such reduced bond to be given by such person or persons as the court or judge shall prescribe, and the court or judge may make any proper order in the premises.

5. All investments made by any trust company of money received by it in any fiduciary capacity shall be at its sole risk, and for all losses of such money the capital stock and property

of the company shall be absolutely liable, unless the investments are such as are proper when made by an individual acting in such fiduciary capacity, or such as are permitted under and by the instrument or order creating or defining the trust.

6. Such court or officer may make orders respecting such trusts and require any trust company to render all accounts, which such court or officer might lawfully require if such executor, administrator, guardian, trustee, receiver, depository or such trust company acting in any other fiduciary capacity, were a natural person.

7. Upon the appointment of a trust company to any fiduciary office, no official oath shall be required.

8. Property or securities received or held by a trust company in any fiduciary capacity shall be a special deposit in such trust company, and the accounts thereof shall be kept separate from each other and separate from the company's individual business. Such property or securities held in trust shall not be mingled with the investments of the capital stock or other property belonging to such trust company or be liable for the debts or obligations thereof. For the purposes of this section, such corporation shall have a trust department, in which all business authorized by subdivisions 3, 4, 5, 7, 8, 9 of section 11799 shall be kept separate and distinct from its general business.

9. Unless otherwise provided in the instrument creating the trust, on all sums, not less than one hundred dollars, which shall be held by a trust company in any fiduciary capacity, or as depository of moneys paid into court, interest shall be allowed by such trust company at not less than the rate of two per centum per annum, compounded annually until the moneys so received shall be duly expended or distributed.

10. The accounts, securities and all records of any trust company relating to a trust committed to it shall be open for the inspection of all persons interested in such trust.

11. Effect of merger or consolidation. When any trust company organized under the laws of this state shall have been appointed executor of the last will of any deceased person, or administrator, with or without the will annexed, of the estate of any deceased person, or guardian, curator, trustee, receiver, assignee, or in any other fiduciary capacity, in the manner provided by law for appointment to any such office, and if such trust company has heretofore merged or consolidated with, or shall hereafter merge or consolidate with any other trust company organized under the laws of this state, then, at the option of said first mentioned company, and upon the filing by it with the court having jurisdiction of the estate being administered, of a certificate of such merger or consolidation, together with a statement

that such other trust company is to thereafter administer the estate held by it and an acceptance by said latter trust company of the trust to be administered, such certificate, statement and acceptance to be executed by the president or vice-president of said respective companies and to have affixed thereto the corporate seals of said respective companies, attested by the secretary thereof, and further upon the approval of said court and the giving of such bond as may be required, all the rights, privileges, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, belonging to said trust estate, and every right, privilege or asset of conceivable value or benefit then existing which would inure to said estate under an unmerged or unconsolidated existence of said first mentioned company, shall be fully and finally and without right or reversion transferred to and vested in the corporation into which it shall have been merged or with which it shall have been consolidated, without further act or deed, and such last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the corporation from which it was, by operation of the provisions of this section, transferred, and said corporation shall succeed to all the relations, obligations and liabilities, and shall execute and perform all the trusts and obligations devolving upon it, in the same manner as though it had itself assumed the relation of trust. (Laws 1915, p. 168.)

Sec. 11802. Trust guaranty fund.—The directors may from time to time set apart, as a trust guaranty fund, such portion of the profits as they may consider expedient. Such fund shall be invested in such securities only as are legal for the investment of trust funds. The accounts of this fund, and the securities in which it is invested, shall be kept in the trust department. (Laws 1915, p. 170.)

Sec. 11803. Application of trust guaranty fund.—The trust guaranty fund shall be absolutely pledged for the faithful performance by the trust company of its duties and undertakings under the provisions of subdivisions three, four, five, seven, eight and nine of section 11799, and shall be applied to make good any default in such performance, and such pledge and liability shall not in any way relieve the stock and general funds of the trust company, but creditors under said subdivisions shall have an equal claim with other creditors upon the capital and other property of the trust company, in addition to the security hereby given and in addition to the deposit made with the bank commissioner under the provisions of section 11838. No portion of such trust guaranty fund shall be transferred to the general capi-

tal while the trust company has undertakings of the kinds mentioned in subdivisions three, four, five, seven, eight and nine of section 11799 for whose performance bonds are required from individuals, outstanding and uncompleted, but income therefrom, if not required at any dividend time to make good such undertakings, may be added to and disposed of with the general income of the trust company. (Laws 1915, p. 170.)

Sec. 11804. Restrictions on power to accept or execute trusts.—When any corporation shall have been named as executor in any will hereafter executed, and shall have qualified as such, the presumption shall be that such will was not prepared by a salaried employe of said corporation; but upon the application of any heir, devisee or legatee, made in the probate court of the county for the removal of such executor said presumption may be rebutted by evidence satisfactory to the court hearing such application, unless said will or some codicil or certificate attached thereto shall contain a recital that at or before the execution of said will, the testator had advice or counsel in relation thereto from some one not under salary from said corporation. In the absence of such recital, the court may on such application and upon satisfactory evidence that said will was prepared by a salaried employe of said corporation, revoke the appointment of, and remove such corporation as such executor. (Laws 1915, p. 170.)

Sec. 11805. Executors and certain other persons not liable as stockholders.—No person holding stock in the corporation as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly. And the estate and funds in the hands of such executors, administrators, guardians or trustees shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name. (Laws 1915, p. 171.)

Sec. 11806. Restrictions on taking and holding real estate.—All real estate purchased by any trust company or taken by it in its own right, in settlement of debts due it, shall be conveyed to it directly by name and the conveyance immediately recorded in the office of the proper recording officer of the county or city in which such real estate is located. Every parcel of real estate so purchased or acquired by any trust company shall be sold by it within six years of the date on which it shall have been acquired

unless there shall be a building thereon occupied in whole or in part by it as an office: *Provided*, that if at any time a trust company changes its location it may have six years from the date of such change to sell the former location. (Laws 1915, p. 171.)

Sec. 11807. Restrictions on loans, purchases of securities and total liabilities to trust company of any one person.—A trust company subject to the provisions of this article: •

1. Shall not directly or indirectly lend to any individual, partnership, corporation, or body politic, either by means of letters of credit, by acceptance of drafts or by discount or purchase of notes, bills of exchange or other obligations of such individual, partnership, corporation or body politic, an amount or amounts in the aggregate which will exceed fifteen (15) per centum of the capital stock actually paid in and surplus fund of such trust company, if located in a city having a population of one hundred thousand or over; and twenty (20) per centum of the capital stock actually paid in and surplus fund of such trust company, if located in a city having a population of less than one hundred thousand and over seven thousand and twenty-five (25) per centum of the capital stock actually paid in and surplus fund of such trust company if located elsewhere in the state, with the following exceptions:

(a) The restrictions in this subdivision shall not apply to loans to, or investments in the interest-bearing obligations of the United States, this state or any city, county, town, village or political subdivision of this state.

(b) The total liability to such trust company of any state other than the state of Missouri, or of any foreign nation, or of a municipal or railroad corporation, or of a corporation subject to the jurisdiction of a public service commission of this state, may equal but not exceed twenty-five per centum of the capital stock actually paid in and surplus fund of such trust company; and the total liabilities to such trust company of any individual, partnership, or of any other corporation or body politic, may equal but not exceed twenty-five per centum of the capital stock actually paid in and surplus fund of such trust company, provided that at least ten (10) per centum of such total liabilities, if the trust company is located in a city having a population of one hundred thousand or over, and at least five (5) per centum of such total liabilities if the trust company is located in a city having a population of less than one hundred thousand and over seven thousand, are (a) upon commercial or business paper actually owned by the person negotiating the same to such trust company, and are endorsed by such person without limitation, or (b) are secured by collateral security having an ascertained market value

of at least fifteen per centum more than the amount of the liabilities so secured.

(c) The total liabilities to such trust company of any individual, partnership or corporation may equal but not exceed thirty-five (35) per centum of the capital stock actually paid in and surplus fund of such trust company, provided that all or any part of such total liabilities is upon paper based upon the collateral security of warehouse receipts covering agricultural products in public elevators and public warehouses subject to state supervision and regulation in this state or in any other state of the United States, under the following conditions: First, that the actual market value of the property held in store and covered by such receipts shall at all times exceed by at least fifteen (15) per centum the amount loaned upon same; and, second, that the property covered by such receipts shall be insured to the full market value thereof against loss by fire and lightning, the insurance policies to be issued by corporations or individuals licensed to do business by the state in which the property is located, and when such insurance has been used to the limit that it can be secured, then in corporations or with individuals licensed to do an insurance business by the state or country of their incorporation or residence, and all policies covering property on which the loan is made shall have endorsed thereon, loss, if any, payable to the holder of such warehouse receipts; *and provided further*, that in arriving at the amount that may be loaned by any trust company to any individual, partnership or corporation on such elevator or warehouse receipts there shall be deducted from such thirty-five (35) per centum of its capital and surplus fund the total of all other liabilities of such individual partnership or corporation to such trust company.

(d) In computing the total liabilities of any individual to a trust company there shall be included all liabilities to the trust company of any partnership of which he is a member, and any loans made for his benefit or for the benefit of such partnership; of any partnership to a trust company there shall be included all liabilities of its individual members and all loans made for the benefit of such partnership or any member thereof; and of any corporation to a trust company there shall be included all loans made for the benefit of the corporation.

(e) The purchase or discount of drafts, or bills of exchange drawn in good faith against actually existing values, shall not be considered as money borrowed within the meaning of this section.

(f) This subdivision shall not be construed to render unlawful the continued holding of any securities heretofore lawfully acquired.

2. Shall not make any loans secured by the stock of another bank or trust company if by the making of such loan the total stock of such other bank or trust company owned and held as collateral security by it will exceed fifteen per centum of the total capital stock of such other bank or trust company.

3. Shall not at any time take or hold loans or discounts secured by bonds and stock or either in any corporation, except as above provided, which loans in the aggregate shall exceed thirty-three and one-third per centum of the capital and surplus and of the trust company making the loan.

4. Shall not make any loan upon the securities of one or more corporations the payment of which loan is undertaken in whole or in part severally, but not jointly, by two or more individuals, firms or corporations:

(a) If the prospective borrowers or underwriters be obligated absolutely or contingently to purchase the securities, or any of them, collateral to the proposed loan, unless they shall have paid on account of the purchase of such securities an amount in cash or its equivalent equal to at least twenty per centum of the several amounts from which they remain obligated in completing the purchase;

(b) If the trust company considering the making of the loan be liable directly, indirectly or contingently, for the repayment of the proposed loan or any part thereof;

(c) If the term of the proposed loan, including any renewal thereof, by agreement, express or implied, exceeds the period of two years;

(d) If the amount, under any circumstances, exceeds twenty per centum of the capital and surplus fund of the trust company.

5. Shall not, nor shall any of its directors, officers, agents or servants, directly or indirectly, purchase or be interested in the purchase of any certificate of deposit, pass book, promissory note or other evidence of debt issued by it, for less than the principal amount of the debt (without interest) for which it was issued. Every trust company or person violating the provisions of this subdivision shall forfeit to the state the face value of the note or other evidence of debt so purchased.

6. Shall not make any loan or discount on the security of the shares of its own capital stock, or be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition unless the time is extended by the bank commissioner. Any trust com-

pany violating any of the provisions of this subdivision shall forfeit to the state the amount of the loan or purchase.

7. Shall not knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained or market value of at least fifteen per centum more than the amount of the loan. Any trust company violating the provisions of this subdivision shall forfeit to the state the amount of the loan.

8. No director, officer, clerk or employe of a trust company of this state shall be permitted to borrow any of the money of the trust company in which he is a director, officer, clerk or employe in excess of ten per centum of the capital and surplus fund without the consent of a majority of the directors of the trust company, other than the borrower, first having been obtained in a meeting of the board, said consent to be made a matter of record before the loan is made: *Provided*, if any such officer, director, clerk or employe shall own or control a majority of the stock of any other corporation a loan to that corporation shall be considered for the purpose of this subdivision as a loan to him. Every trust company or officer thereof knowingly violating the provisions of this subdivision shall, for each offense, forfeit to the state the amount lent.

9. Shall not invest or keep invested in the stock of any private corporation an amount in excess of fifteen per centum of the capital and surplus fund of such trust company; nor shall it purchase or continue to hold stock of another bank or trust company if by such purchase or continued investment the total stock of such other bank or trust company owned and held by it as collateral will exceed fifteen per centum of the stock of such other bank or trust company: *Provided, however*, that this limitation shall not apply to the ownership of the capital stock of a safe deposit company the vaults of which are connected with or adjacent to an office of such trust company, nor to the ownership by such trust company, or its stockholders, of a part or all of the capital stock of one bank organized under the laws of the United States or of this state, nor to the ownership of a part or all of the capital of one corporation, organized under the laws of this state, for the principal purpose of receiving savings deposits or issuing debentures or loaning money on real estate or dealing in or guaranteeing the payment of real estate securities, or investing in other securities in which trust companies may invest under this act, nor to the continued ownership of stocks lawfully acquired, prior to the first day of January, A. D. 1915.

10. *Provided*, that the provisions in this section shall not be construed as in anywise to interfere with the rules and regu-

lations of any clearing house association in this state in reference to the daily balances and provided that this section shall not apply to balances due from any correspondent subject to draft.

11. *Provided*, that a trust company which does not accept demand deposits shall be permitted to make loans secured by a first mortgage or deed of trust on real estate to any individual, partnership or corporation, and to deal and invest in the interest-bearing obligations of any state, or of any city, county, town, village or political subdivision thereof, in an amount not to exceed its capital stock actually paid in and surplus fund, such loans on real estate not to exceed 66 2-3 per centum of the appraised value of such real estate. (Laws 1915, p. 171.)

Sec. 11808. Money not to be employed in trade or commerce. No trust company shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants: *Provided*, that it may sell all kinds of property which may come into its possession as collateral security for loans, or in the ordinary collection of debts. (Laws 1915, p. 175.)

Sec. 11809. Restrictions as to entries in books—amortization of securities.—1. No trust company shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other individual, partnership or corporation, or under any title or designation that is not truly descriptive thereof.

2. The bonds and other interest-bearing corporate securities purchased by a trust company shall be entered on its books at the actual cost thereof, and for the purpose of calculating the undivided profits applicable to the payment of dividends, such securities shall not be estimated at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such security purchased for a sum in excess of the amount payable thereon at maturity, and charging to profit and loss; a sufficient sum to bring it to par at maturity, or adding to the cost of any such security purchased at less than the amount payable thereon at maturity, and crediting to profit and loss, a sufficient sum to bring it to par at maturity; but nothing herein contained shall prevent a trust company from carrying such bonds and other interest-bearing corporate securities on its books at their market value.

3. No trust company shall, except with the written approval of the commissioner, enter or at any time carry on its books the real estate and the building or buildings thereon, used by it as its place of business, or the furniture and fixtures in said building at a valuation exceeding their actual cost to such trust company.

4. Every trust company shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the commissioner pursuant to section 11698. (Laws 1915, p. 175.)

Sec. 11810. Reserves against deposit.—Every trust company shall maintain total reserves against its aggregate demand deposits, as follows:

1. Eighteen per centum of such deposits if such trust company is located in a city having a population of two hundred thousand or over, and at least seven per centum of such deposits shall be maintained as reserves on hand.

2. Fifteen per centum of such deposits, if such trust company is located in a city having a population of twenty-five thousand or over and less than two hundred thousand; and at least six per centum of such deposits shall be maintained as reserves on hand.

3. Fifteen per centum of such deposits if such trust company is located elsewhere in the state. The reserves on hand required by this section shall consist of any form of coin or currency, authorized by the laws of the United States. If any trust company shall have become a member of a federal reserve bank, it may maintain as reserves on deposit with such federal reserve bank such portion of its total reserves as shall be required or permitted, of members of such federal reserve bank; and if such trust company has an office in a city having a population of two hundred thousand or over, the remainder of its total reserves shall be carried as reserves on hand; *Provided, however,* that any trust company becoming a member of a federal reserve bank, and while it continues such member, shall be required to maintain only such reserves as are required by the federal reserve act and any amendments thereto.

4. Any director, officer or employe of a trust company who makes any agreement, express or implied, before or at the time of issuing a certificate of deposit by which its holder may demand or receive payment thereof in advance of its maturity, or who before or at the time of receiving a savings deposit, makes an agreement, express or implied, by which the holder of the savings pass book may demand or receive payment of the savings deposit in advance of the time provided for payment under the rules and regulations under which the savings deposit was received, shall forfeit and pay the sum of one hundred dollars for each violation of this provision to be collected as provided for in this chapter. (Laws 1919, p. 169.)

Sec. 11811. Reserve depositories—designation and approval.—Any trust company may keep the reserves on deposit, pro-

vided for by the preceding section, in a depository or depositories, designated by it, and which, except as otherwise provided in that section, shall be a bank, trust company or national banking association, approved by the bank commissioner. (Laws 1915, p. 177.)

Sec. 11812. Assessments for encroachments on reserves against deposits.—Whenever the reserve of a trust company shall fall below the amount hereinbefore required of it, then such trust company shall not make any new loans, discounts or acceptances, except the discount of purchase of bills of exchange, payable at sight, until it shall have restored its required reserve. (Laws 1915, p. 177.)

Sec. 11813. Business shall be managed by board of directors—qualifications and disqualifications of directors.—The affairs and business of the corporation shall be managed by a board of directors or managers, consisting of not less than five nor more than thirty shareholders, who shall be elected annually as hereinafter provided. Each director must be a citizen of the United States, and at least three-fourths of the directors must be residents of this state at the time of their election and during their continuance in office. If at a time when not more than three-fourths of the directors are residents of this state, any director shall cease to be a resident of this state, he shall forthwith cease to be a director of the trust company and his office shall be vacant. Every director of a trust company shall be a stockholder of the trust company owning in his own right at least five shares, and every person elected to be a director who, after such election, shall hypothecate, pledge or cease to be the owner in his own right of the amount of stock aforesaid, shall cease to be a director of the trust company and his office shall be vacant, and he shall not be eligible for re-election as a director for a period of one year from the date of the next succeeding annual meeting, and no person shall be a director in any trust company against whom such trust company shall hold a judgment. The directors of such trust company, named in the articles of association, shall, as soon as may be after their organization, divide themselves, by ballot, into three classes of equal number, as near as may be, designated, the first, second and third class; of which, the first class shall remain in office for one year, the second class two years, and the third class three years; and at each annual election, held as prescribed in the general corporation law of the state, directors shall be elected for the term of three years to fill the vacancies created by the retiring class provided that all directors whose terms of office shall expire as heretofore provided shall none the less continue in office until their successors are elected and have qualified. (Laws 1915, p. 177.)

Sec. 11814. Oath of directors.—Every person who shall be elected director of a trust company shall within thirty days after said election, qualify himself as such director by filing with the officers of such trust company an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the trust company, and will not knowingly violate, or willingly permit to be violated, any of the provisions of the law applicable to such trust company, and that he is the owner in good faith and in his own right, of shares of stock of the value required by this article, subscribed by him or standing in his name on the books of the trust company and that the same is not hypothecated, or in any way pledged as security for any loan or debt, and, in case of re-election or reappointment, that such stock was not hypothecated, or in any way pledged as security for any loan or debt during his previous term, provided such term began after the passage of this act. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and the fact of such oath having been made and filed with the officers of the trust company shall be noted on the records of the acts of the directors. Failure to comply with this provision within the time specified shall work a forfeiture of the position: *Provided, however,* that the bank commissioner may, for cause deemed sufficient by him, extend the time; and when any vacancy occurs by such failure the board of directors shall, at the next regular meeting thereafter, enter the fact of such vacancy upon their records and promptly proceed to elect some competent person to fill the vacancy for the unexpired term. (Laws 1915, p. 177.)

Sec. 11815. Failure to elect—when vacancies filled by board.—In case of failure to elect any director on the day named, the directors whose terms of office do not that year expire may proceed to elect a number of directors equal to the number in the class whose term that year expires or such number as may have failed of re-election. The persons so elected, together with the directors whose terms of office shall not that year expire, shall constitute the board until another election shall be held according to law. Vacancies occurring in the intervals of election shall be filled by the board of directors for the balance of the unexpired term. (Laws 1915, p. 178.)

Sec. 11816. Change of number of directors.—The stockholders at any annual meeting, provided notice of the proposed change be given in the notice of such meeting, may, by a majority of all the votes of the stockholders of such trust company, change by resolution the number of its directors to such number not less than five nor more than thirty as they may decide, but such

change shall not become effective until approved by the commissioner; or such trust company may change the number of its directors by amending its articles of association. A copy of every resolution changing the number of directors at an annual meeting, together with proof by affidavit of the publication of said notice of the annual meeting, shall be immediately filed in the office of the commissioner and a certified copy thereof, together with the written approval of the commissioner, shall be immediately filed in the office of the recorder of the county or city in which such trust company is located. (Laws 1915, p. 178.)

Sec. 11817. Annual meeting of directors—election of officers.—Within two weeks after the date on which the annual meeting of stockholders is held the directors shall, after their due qualification, hold a meeting at which they shall elect a president from their own number, one or more vice-presidents, and such other officers as are provided for by the by-laws to be elected annually. (Laws 1915, p. 179.)

Sec. 11818. Monthly meetings of directors—statement to directors.—The board of directors of each and every trust company organized or doing business under this article shall hold a regular meeting at least once each month and keep a written record of its approval or disapproval of each and every purchase and sale of securities and each and every discount, loan, acceptance, renewal or other advance, including every overdraft in excess of \$100, made since the last regular meeting of the board. If there shall be collateral to such indebtedness, it shall be described as of the date of the meeting. There shall also be submitted to such meeting, and filed with the records thereof, "an additional" list giving the aggregate of loans, discounts, acceptances and advances, including overdrafts, to each individual, partnership, corporation or person, whose liability to the trust company has been increased \$1,000 or more since the last regular meeting of the board; and also a list showing all past due paper. And at such monthly meeting the minutes of the meeting shall show the aggregate of the then existing indebtedness and liability to the trust company of each of the directors, officers and employes of the trust company. No bills payable shall be made, and no bills shall be rediscounted by the trust company except with the consent of the board of directors: *Provided, however*, that if the trust company be a member of a federal reserve bank, rediscounts may be made to it by the officers in accordance with its rules, a list of all such rediscounts to be submitted to the next meeting of the board. (Laws 1915, p. 179.)

In *Denny v. Jefferson County*, 272 Mo. 436, 199 S. W. 250, it was held that consent of majority of directors, though general, to a loan to an officer of the trust company is sufficient where otherwise in accordance with the statute to justify a

loan in excess of ten per cent, the court saying that the "provision seems unlimited in its scope and to permit the loan of the entire capital to an officer of the company, provided only that its terms are complied with."

Sec. 11819. Examinations by directors into affairs of trust companies—may employ assistants.—It shall be the duty of the board of directors of every trust company not less than once in each year and whenever, and as often as required by the bank commissioner, and within thirty days after notice from him, to examine, or to cause a committee of at least three of its members or stockholders to examine, fully the books, papers and affairs of the trust company, and the loans and discounts and acceptances thereof, and particularly the loans or discounts or acceptances made directly or indirectly to its officers or directors, or for the benefit of such officers or directors, or for the benefit of other corporations of which such officers or directors are also officers or directors, or in which they have a beneficial interest as stockholders, creditors, or otherwise, with the special view of ascertaining their safety and present value, and the value of the collateral security, if any, held in connection therewith, and into such other matters as the bank commissioner may require. Such directors or committee of stockholders shall have the power to employ such assistance in making such examination as they may deem necessary. (Laws 1915, p. 179.)

Sec. 11820. Reports of directors' examinations—penalty for failure to make or file.—Within ten days succeeding any examination made pursuant to the requirements of the last section, a report in writing thereof, sworn to by the directors or stockholders making the same, shall be made to the board of directors of such trust company, and placed on file in said trust company, and a duplicate thereof filed in the office of the bank commissioner. Such report shall particularly contain a statement of the assets and liabilities of the trust company examined, as shown by the books, together with such deductions from the assets, and the addition of such liabilities, direct, indirect, contingent, or otherwise as such directors or committee, after such examination, may find necessary in order to determine the true condition of the trust company. It shall also contain a statement showing in detail every known liability to such trust company, direct, indirect, contingent, or otherwise, of every officer or director thereof and of every corporation in which any such officer or director owns stock to the amount of twenty-five per centum of the total outstanding stock, or of which any such officer or director, is also an officer or director. It shall also contain a statement, in detail, of loans, if any, which in their opinion are doubtful or worthless, together with their reasons for so regarding them; also a statement of loans made on collateral security which in their opinion are insufficiently se-

cured, giving in each case the amount of the loan; the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact, and its actual value as nearly as possible. Such report shall also contain a statement of overdrafts, of the names and amounts of such as they consider worthless or doubtful, and a full statement of such other matters as affect the solvency and soundness of the institution. If the directors of any trust company shall fail to make, or to cause to be made, or to file such report of examination in the manner, and within the time, specified, such trust company shall forfeit to the state one hundred dollars for every day such report shall be delayed. (Laws 1915, p. 180.)

Sec. 11821. Communications from banking department must be submitted to directors and noted in minutes.—Each official communication directed by the bank commissioner or one of his deputies to a trust company or to any officer thereof, relating to an examination or investigation conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the trust company, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board. (Laws 1915, p. 180.)

Sec. 11822. Reports to commissioner—penalty for failure to make.—Within ten days after service upon it of the notice provided for by section 11690, every trust company shall make a written report to the commissioner, which report shall be in the form and shall contain the matters prescribed by the commissioner and shall specifically state the items of capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities, and such other items as may be necessary to inform the public as to the financial condition and solvency of the trust company, or which the commissioner may deem proper to include therein. Every such report shall be verified by the oaths of the president or vice-president and secretary or assistant secretary, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it; such report shall be attested by three directors and shall be a report of the actual condition of such corporation at the close of business on the day designated and which day shall be prior to such call. Every such report shall be published by the trust company in one newspaper of the place where its principal place of business is located, or if no newspaper is published there, in a newspaper of general circulation published within the county, and a copy of such publication, with the affidavit of the publisher, shall be attached to such report: *Provided,*

if said trust company is located in a town or city having a population exceeding ten thousand inhabitants, then such publication must be in a daily newspaper, if such is published in such city; but if such trust company is located in a town or city having a population of ten thousand inhabitants or less, then said publication may be in either daily or weekly newspaper published in said town or city as aforesaid; and in all cases, a copy of the said statement shall be posted in the banking house accessible to all. Every such trust company shall also make such other special reports to the commissioner as he may from time to time require, in such form and at such date as may be prescribed by him and such report shall, if required by him, be verified in such manner as he may prescribe. If any such trust company shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the commissioner, such trust company shall forfeit to the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the commissioner. Should any president or secretary of any such trust company or any director thereof, fail to make the statement so required of him or them, or willfully and corruptly make a false statement, he or they and each of them shall be deemed guilty of a misdemeanor, and, upon conviction thereof, upon information, punished by a fine for each offense not exceeding five hundred dollars, and not less than one hundred dollars, or by imprisonment not less than one nor more than twelve months in the city or county jail, or by both such fine and imprisonment. (Laws 1915, p. 181.)

Sec. 11823. Calculation of earnings for dividend period.—To determine the amount of gross earnings of a trust company for any dividend period the following items may be included:

1. All earnings actually received during such period, less interest accrued and unpaid included in the last previous calculation of earnings;
2. Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this article upon which debts no default of more than one year exists and upon corporate stocks, bonds, or other interest-bearing obligations owned by it upon which no default exists;
3. The sums added to the cost of securities purchased for less than par as a result of amortization, provided the market value of such securities is at least equal to their present cost as determined by amortization;
4. Any profits actually received during such period from the sale of securities, real estate or other property owned by it;

5. Sums recovered on items previously charged off, and any amounts allowed by the bank commissioner on account of assets previously disallowed and charged off;

6. Provided the bank commissioner shall have approved, and only to the extent of such approval, any increase in the book value of an office building owned by it, which building or a portion thereof is used by it as a place of business.

To determine the amount of net earnings for such dividend period the following items shall be deducted from gross earnings:

1. All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts, and the management of its affairs, properly belonging to the period under consideration for the calculation of net earnings for dividend purposes, and not previously deducted for such purposes;

2. Interest paid, or accrued and unpaid, upon debts owing by it, and properly belonging to the period under consideration for the calculation of net earnings for dividend purposes, and not previously deducted for such purposes;

3. The amounts deducted through amortization from the cost of corporate stocks, bonds or other interest-bearing obligations purchased above par in order to bring them to par at maturity;

4. All losses sustained by it. In the computation of such losses all debts owing it shall be included upon which no interest shall have been paid for more than two years or on which a judgment has been recovered which shall have remained unsatisfied for two years, provided that the bank commissioner, in either case, may extend such time beyond said period of two years; and such other assets as shall have been disallowed by the commissioner, or by its board of directors. The balance thus obtained shall constitute the net earnings of such trust company for such period. (Laws 1915, p. 182.)

Sec. 11824. Surplus fund—of what composed and for what purposes used.—Every trust company shall create a fund to be known as a surplus fund. Such fund may be created or increased by contributions, by transfers from undivided profits, or from net earnings. Such fund up to twenty per centum of the capital of the trust company shall be used only for the payment of losses in excess of undivided profits. (Laws 1915, p. 183.)

Sec. 11825. How net earnings credited for dividend purposes; credits to surplus fund and to undivided profits—dividends to stockholders.—When the net earnings of a trust company have been determined at the close of a dividend period as provided in section 11823, if its surplus fund does not equal twenty per cen-

tum of the trust company's capital, one-tenth of such net earnings shall be credited to the surplus fund or so much thereof, less than one-tenth, as will make such fund equal to twenty per centum of such capital. *Provided* that until the capital and surplus fund of any trust company now existing, the capital of which is not equal to the requirements of section 11793 equals twenty per centum more than the minimum of capital for a trust company in its location, one-tenth of its net earnings at the close of each dividend period shall be credited to the surplus fund. The balance of such net earnings, or the entire amount thereof if such capital equals such requirements and such fund equals such twenty per centum, may be credited to the trust company's profit and loss account; or, if its expenses and losses for such dividend period exceed its gross earnings, such excess shall be charged to its profit and loss account. The credit balance of such account shall constitute the undivided profit at the close of such dividend period, and shall be available for dividends. The directors of any trust company may from time to time declare such dividends as they shall judge expedient from such undivided profits. No trust company shall declare, credit or pay any dividend to its stockholders until it shall have made good any existing impairment of its capital, and all officers or directors of such trust company who shall assent to declaring and paying a dividend whilst the capital stock is so impaired, shall be jointly and severally liable to the creditors of the trust company to the amount of such dividend for any loss resulting from the payment of such dividend. (Laws 1915, p. 183.)

Sec. 11826. Capital stock may be increased or diminished—business extended.—Any trust company now existing or hereafter formed for any of the purposes contemplated by this article may increase or diminish its capital stock by complying with the provisions of this article, in any amount within the limits of this article, and may also extend its business to any other purposes authorized by this article, and may make any change in its articles of agreement not inconsistent with the provisions of this article, subject to the provisions and liabilities thereof. (Laws 1915, p. 183.)

Sec. 11827. Meeting of stockholders to increase or diminish capital stock—vote necessary for same.—Whenever any trust company shall desire to call a meeting of its shareholders for the purpose of availing itself of the privileges and provisions of this article, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, or the length of its corporate life, it shall be the duty of the directors to publish a notice signed by at least a majority of them, in a newspaper pub-

lished in the county or city, if any shall be published therein, at least sixty days, and to deposit a written or printed copy thereof in the postoffice, postage prepaid, addressed to each stockholder at his usual place of residence, at least sixty days previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be extended or changed. An affirmative vote of the persons holding the larger amount in value of all the shares of stock shall be necessary to increase or diminish the amount of its capital stock, or to extend or change its business, as aforesaid, or to enable a trust company to avail itself of the provisions of this article. The notice provided for in this section shall be published at least once a week, and the first publication must be at least sixty days before the day of such meeting. (Laws 1915, p. 183.)

Sec. 11828. Meeting to increase or diminish capital stock—how conducted—statement to be recorded and filed with bank commissioner, etc.—If, at any time and place specified in the notice provided for in the preceding section, stockholders shall appear in person or by proxy, in number representing not less than a majority of all the shares of stock of the trust company, they shall organize by choosing one of the directors chairman of the meeting, and a suitable person for secretary, and proceed to a vote of those present in person or by proxy; and if, on canvassing the vote, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business, as aforesaid, or availing itself of the privileges and provisions of this article, a statement of the proceedings, showing a compliance with the provisions of this article, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of assets and liabilities of the trust company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed, verified by the affidavit of the chairman and be countersigned by the secretary; and such statement shall be acknowledged by the chairman and recorded as provided in section 11791 of this article and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner, who shall promptly satisfy himself that there has been a compliance in good faith with all the requirements of the law relating to such increase or decrease, or extending or changing its business as aforesaid, or availing itself of the privileges and provisions of this article, and when he is so satisfied he shall thereupon issue a certificate that such trust company has complied with the law made and provided for the increase or decrease of capital stock, as the case may be and the amount to which such capital

stock is increased or decreased; and such certificate or certified copies thereof shall be taken in all the courts of this state as evidence of such increase or decrease of stock; and thereupon the capital stock of such trust company shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, as aforesaid, and the trust company shall be entitled to the privileges and provisions and be subject to the liabilities of this article. (Laws 1915, p. 184.)

Sec. 11829. Secretary, how appointed—to give bond—limitation authority.—The directors may appoint and remove any secretary or other officer or employe at pleasure. The secretary or any other officer or employe shall have no power to pledge, or hypothecate any notes, bonds or other obligations received by said corporation for money loaned, until such power and authority shall have been given such secretary or other officer or employe by the board of directors, a written record of which proceeding shall first have been made. The president, secretary, assistant secretary, treasurer, assistant treasurer, or any other officer, upon whom the powers of a secretary or treasurer may be imposed by the board of directors, and every teller, before entering on the duties of their office or employment, shall give good and sufficient bonds, which shall be approved by the board of directors, in writing, on the records of the board, upon which bonds no member of the board of directors shall become a surety, in such sum and with such number of sureties as the board may direct, conditioned that they will well and faithfully perform all the duties of their office, and that they (the sureties) will hold the trust company harmless for any loss occasioned by any act or acts of larceny, embezzlement, fraud, dishonesty, forgery, theft, wrongful abstraction or willful misapplication committed by such officer or teller, directly or through connivance with others, until all his accounts with the trust company shall have been fully settled and satisfied, such bond to be deposited in some safe place inaccessible to the maker the eof or the sureties thereupon; and all acts of pledging and hypothecating done by said secretary, or other officer or employe of said bank, without the authority from the board of directors, shall be null and void. (Laws 1915, p. 185.)

Sec. 11830. Penalties for receiving deposits when institution insolvent.—No president, director, manager, secretary, or other officer or agent of any trust company organized and doing business under the provisions of this article, shall receive or assent to the reception of deposits, or create or assent to the creation of any debts of such trust company, after he shall have knowledge of the fact that it is insolvent or in failing circumstances. Every person violating the provisions of this section shall be individually

responsible for such deposits so received, and all such debts so contracted: *Provided*, any director who may have paid more than his share of the liabilities mentioned in this section may have his proper remedy at law against such other persons as shall not have paid their full share of such liabilities; *and provided further*, that in case of the insolvency of one or more of such officers, agents or managers, the same shall be paid, for the time being, by those who are solvent, in equal proportions. (Laws 1915, p. 185.)

Sec. 11831. Liability under last preceding section—evidence of knowledge.—In all suits brought for the recovery of the amount of any deposits received, or debts so created, all officers, agents or managers of any such trust company charged with so having assented to the reception of such deposits, or the creation of such debt, may be joined as defendants or proceeded against severally, and the fact that such trust company was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be *prima facie* evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent or manager so charged therewith. (Laws 1915, p. 186.)

Sec. 11832. Application of this article.—This article shall extend to and may be enforced by and against the executors and administrators of such deceased officers, agents and managers. (Laws 1915, p. 186.)

Sec. 11833. Interpleader in certain actions—costs.—1. In all actions against any trust company to recover for moneys on deposit therewith, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such trust company, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of remedies now or hereafter existing.

2. The funds on deposit which are the subject of such an action may remain with such trust company subject to the order of the court until final judgment therein, and be entitled to the same interests as other deposits of the same class, and shall be paid by such trust company in accordance with the final judgment of the court; or in the discretion of the court the deposit in controversy may be paid into court to await the final determination

of the action, and when the deposit is so paid into court such trust company shall be struck out as a party to the action, and its liability for such deposit shall cease.

3. The cost in all actions against a trust company to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action. (Laws 1915, p. 186.)

Sec. 11834. Rate of interest—effect of usury.—Every trust company which becomes a member of a federal reserve bank and while it continues as such member may take, receive, reserve and charge on every loan and discount made, or upon any note, bill of exchange or other evidence of debt, interest at the rate of eight per centum per annum; and such interest may be taken in advance, reckoning the days from which the note, bill or evidence of debt has to run. The knowingly taking, receiving, reserving or charging a greater rate of interest shall be held and adjudged a forfeiture of the entire interest which the note, bill of exchange or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid, the person paying the same or his legal representatives may recover twice the entire amount of the interest thus paid from the trust company taking or receiving the same, if such action is brought within two years from the time the excess of interest is taken. The purchase, discount or sale of a *bona fide* bill of exchange, note or other evidence of debt payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight draft, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than eight per centum per annum. The true intent and meaning of this section is to place and continue such trust company on an equality in the particulars herein referred to with the national banks organized under the act of congress, entitled "An act to provide a national currency, secured by pledges of United States bonds, and to provide for the circulation and redemption thereof," approved June the third, eighteen hundred and sixty-four. (Laws 1915, p. 186.)

Sec. 11835. Report of unclaimed deposits, dividends and interest—publication—penalty for non-compliance.—In the month of September in every fifth year, and beginning in September, 1915, and on or before the tenth day thereof, every trust company shall make a written report to the bank commissioner, verified by the oaths of the president or vice-president and secretary or assistant secretary, which report shall contain a true and accurate statement of all deposits made with the trust company except those held by it in a fiduciary capacity and all dividends declared and interest accrued upon any of its stock or

other evidences of indebtedness, which on the first day of August preceding such report amounted to fifty dollars or over and had remained unclaimed by any person or persons, authorized to receive the same for five years then next preceding. Such statement shall set forth the date of each such deposit, its amount and the name and last known place of residence or postoffice address of the person making it, the name of each person in whose favor and the time when any such dividend may have been declared or any such interest may have accrued, its amount, and upon what number of shares or upon what amount of stock or other evidences of indebtedness of such trust company, it was declared or accrued. In case any such trust company shall at said date have held no such unclaimed deposits, dividends or interest, it shall at the time above specified make a written report to the commissioner so stating, which report shall be verified as herein above provided. No deposits, dividends or interest shall be deemed unclaimed within the meaning of this section if it appears from the books of the trust company or from other written evidence on file with the trust company that the person or persons authorized to receive them have knowledge thereof. Every such trust company which reports any unclaimed deposits, dividends or interest under the provisions of this section shall cause to be published once in each week for two successive weeks in a newspaper designated by the commissioner published in the county and in the village or city in which such trust company is located, if there be a newspaper published therein, or in the city of St. Louis if the trust company is located there, a true copy of such report, and shall file with the commissioner on or before the first day of October thereafter proof by affidavit of such publication. The expense of such publication shall be paid by the trust company, but if, on or before the first day of August in that year, the trust company shall have mailed, postage prepaid, to each person authorized to receive any such unclaimed deposit, dividend or interest, at his last known place of residence or postoffice address, a statement showing the amount to which such person is entitled and requesting written acknowledgment thereof, the trust company may reimburse itself for such expense by deducting the amount thereof from the sums due any such person or persons who shall not have made written acknowledgment before the filing of such report with the commissioner, in the proportion that each such sum bears to the aggregate thereof. Any such trust company failing to make any report or to file any affidavit of publication required by this section shall forfeit to the state the sum of one hundred dollars for each week such report or the filing of such affidavit of publication shall be so delayed or withheld, unless the time therefor shall have been extended by the commissioner. (Laws 1915, p 187.)

Sec. 11836. Liability of trust company for assessments by commissioner.—When the commissioner, pursuant to the power conferred on him by article one of this chapter shall have levied any assessment upon any trust company and shall have duly notified such trust company of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such trust company to the commissioner. (Laws 1915, p. 188.)

Sec. 11837. Preservation of books and records of trust company.—Every trust company shall preserve all its records of financial entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon. (Laws 1915, p. 188.)

Sec. 11838. Securities to be deposited with bank commissioner, etc.—Any company now doing business in this state, or which may hereafter be organized under the provisions of this article to do business in this state, which shall make with the bank commissioner a deposit of two hundred thousand dollars, consisting of cash, or United States, state, county, municipal or other bonds, or bonds, notes or debentures secured by first mortgage or deeds of trust on unencumbered real estate in the state of Missouri, worth at least double the amount loaned thereon, or such other first-class securities as the said commissioner may approve, said bonds or securities not to be received or held at a rate above par, but if their market value is less than par, they shall not be held above their actual market value, and which shall satisfy said commissioner of its solvency, and shall have received the certificate of said commissioner that such company has made said deposit and has satisfied him of its solvency, it being hereby made the duty of said commissioner to issue such certificate in accordance with the facts, shall be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee, or in any other fiduciary capacity, by appointment of any court, or under will, or depositary of money in court, without giving bond as such, and become sole guarantor or surety in or upon any bond required by law to be given in any proceeding in law or equity in any of the courts of this state or other states or of the United States, any other statute to the contrary notwithstanding; and whenever such company shall exhibit to the court, judge, clerk, or other officer, making such appointment, or whose duty it is to approve such bond, the certificate of the bank commissioner of the state of Missouri, that such company has complied with the provisions of this section with respect to said deposit and proof of solvency, the court, or officer making such appointment, or whose duty it is to approve such bond, may appoint such company to

such office or trust, and permit it to qualify as such without giving any bond, and permit such company to become sole guarantor or surety upon any such bond, without requiring any other surety therefor. The fund so deposited with the bank commissioner shall be primarily liable for the obligations of such company as guardian, curator, executor, administrator, assignee, receiver, trustee, or any other fiduciary capacity, by appointment of court or under will, depository of money in court, guarantor or surety in or upon any such bond, and shall not be liable for any other debt or obligation of the company until all trust liabilities as aforesaid, of such company have been discharged; and all of sections 6222, 6225, 6226, 6341, 6342, 6344, 6345 and 6346 of the Revised Statutes of the state of Missouri of 1919, so far as the same are applicable and not inconsistent with the provisions of this article, shall apply to all companies doing business under this section: *Provided*, that wherever in these sections just named the superintendent of the insurance department is mentioned, then so far as this section is concerned the powers, rights and duties there put on the said superintendent shall devolve and be on the bank commissioner, instead of the said superintendent. And in case the interest on any security deposited with the bank commissioner under this section shall not be paid at maturity, and shall remain unpaid for six months thereafter, it shall be his duty to require the company which deposited the same to remove them and deposit in their place other securities, equal in amount to those removed, upon which the interest has not been defaulted. *Provided*, that any person doing the business specified in this section, shall enjoy the privileges conferred by this section by complying with the provisions thereof. *Provided*, that before any company shall be permitted to comply with the provisions of this section, such company shall have at the time of making said deposit, in addition to said deposit of two hundred thousand dollars, a paid up capital of at last fifty thousand dollars, if located in a city of less than 25,000 population; one hundred thousand dollars, if located in a city of 25,000 population or over and less than 200,000; two hundred thousand dollars, if located in a city of 200,000 population or over. (Laws 1915, p. 188.)

Lee Fidelity Trust Company of K. C. v. Revelle, 266 Mo. 202, 181 S. W. 53.

Sec. 11839. Prohibition against encroachments upon powers of trust companies.—No person, association, firm or corporation, other than a corporation authorized by the laws of this state to do the business of a trust company and subject to the supervision of the bank commissioner as provided by such laws, shall make use of the word or words "trust" or "trust company" as part of any artificial or corporate name or title, nor make use of any sign at the place where his or its business is transacted, having thereon

such words or any other word or words indicating that such place or office is the place or office of a trust company, nor make use of or circulate any written or printed, or partly written or partly printed matter whatever having thereon any such words or any other word or words indicating that the business conducted is that of a trust company, nor transact business in such way or manner as to lead the public to believe, or as in the opinion of the bank commissioner might lead the public to believe, that his or its business is that of a trust company. Every person violating the provisions of this section, either as an individual or an interested party in any association, firm or corporation, shall be punished by fine of not less than one hundred dollars nor more than one thousand dollars, and a further fine of fifty dollars per day for each day after written notice of such violation. The bank commissioner shall have authority to examine the accounts, books and papers of any person, association, firm or corporation whom he has reason to suspect is violating the provisions of this section and to summon and examine under oath, which he is empowered to administer, any person whom he may have reason to believe has violated or is a participant in any violation of the provisions of this section. (Laws 1915, p. 190.)

Sec. 11840. Deposits of minors and trust deposits and deposits in the names of more than one person.—When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be valid and sufficient release and discharge for such deposit or any part thereof to the trust company. When any deposit shall be made by any person describing himself in making such deposit as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to the trust company in the event of the death of the person so described as trustee, such deposit or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was thus stated to have been made. When a deposit shall have been made by any person in the name of such depositor and another person and in form to be paid to either, or the survivor of them, such deposit thereupon, and any additions thereto made, by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the lifetime of both, or to the survivor after the death of

one of them; and such payment and the receipt or acquittance of the one to whom such payment is made, shall be a valid and sufficient release and discharge to said trust company, for all payments made on account of such deposit prior to the receipt by said trust company of notice in writing signed by any one of such joint tenants, not to pay such deposit in accordance with the terms thereof. (Laws 1915, p. 190.)

Sec. 11841. Special remedies applicable to trust companies doing a safe deposit business.—Every trust company doing a safe deposit business shall be entitled to the following special remedies in enforcing the liability of depositors and of renters or lessees of boxes:

1. Whenever any trust company doing a safe deposit business shall have received personal property upon deposit, as bailee, and shall have issued a receipt therefor, it shall be deemed a warehouseman as to such property, and all existing statutes and laws affecting warehousemen shall apply to such deposits, and the trust company shall have a lien on such deposits or the proceeds thereof to the same extent and with the same effect, and enforceable in the same manner, as now provided by law with reference to "warehousemen."

2. If the amount due for the rental of any safe or box in the vaults of any trust company shall not have been paid for one year, such company may, at the expiration thereof, send to the person or persons, partnership or corporation in whose name such safe or box stands on its books a notice in writing in a securely closed postpaid, registered letter, directed to such renter or lessee at his, their or its postoffice address, as recorded upon the books of the trust company, notifying such renter or lessee that if the amount due for the rental of such safe or box shall not be paid within thirty days from date, the trust company will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of the general safes or boxes of the trust company.

Upon the expiration of thirty days from the date of mailing such notice, and the failure within said period of time of the renter or lessee in whose name the safe or box stands on the books of the trust company to pay the amount due for the rental thereof to the date of notice, the trust company may, in the presence of a notary public and of its president or secretary, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed up by such notary public in a package, upon which the notary public shall distinctly mark the name of the renter or lessee in whose name the safe or box stood on the books of the trust company, and the date of removal of the property, and when such package has been so marked for identification

by the notary public, it shall, in the presence of the president or secretary of the trust company be placed by the notary public in one of the general safes or boxes of the trust company, at a rental not to exceed the original rental of the safe which was opened, and shall remain in such general safe or box for a period of not less than two years, unless sooner removed by the owner thereof, and the notary public shall thereupon file with the trust company a certificate under seal, which shall fully set out the date of the opening of such safe or box, the name of the renter or lessee in whose name it stood and a list of the contents, if any. A copy of such certificate shall within ten days thereafter be mailed to the renter or lessee in whose name the safe or box so opened stood on the books of the trust company, at his, their or its last known postoffice address, in a securely closed postpaid, registered letter, together with a notice that the contents will be kept, at the expense of such renter or lessee, in a general safe or box in the vaults of the trust company, for a period of not less than two years. At any time after the mailing of such certificate and notice, and before the expiration of two years, such renter or lessee may require the delivery of the contents of the safe as shown by said certificate, upon the payment of all rentals due at the time of opening of the safe or box, the cost of opening the box, the fees of the notary public for issuing his certificate thereon, and the payment of all further charges accrued during the period the contents remained in the general safe or box of the trust company. After the expiration of two years from the time of mailing the certificate herein provided for, the trust company shall mail in a securely closed postpaid, registered letter, addressed to such renter or lessee at his, their or its last known postoffice address, a notice stating that two years have elapsed since the opening of the safe or box and the mailing of the certificate thereof, and that the trust company will sell all the property or articles of value set out in said certificate, at a time and place stated in such notice, not less than thirty days after the time of mailing such notice, and stating the amount which shall have then been due for rental up to the time of opening such safe, the cost of opening thereof, and the further cost of safe-keeping all of its contents for the period since the opening of the safe or box. Unless such renter or lessee shall pay on or before the day mentioned all said sums, and all the charges accruing to the time of payment, including advertising, the trust company may sell all the property or articles of value set out in said certificate, at public auction, at the time and place stated in said notice; provided a notice of the time and place of sale has been published once within ten days prior to the sale, in a newspaper, published in the place where the sale is held. From the proceeds of the sale, the trust company shall deduct all its charges as stated in said

notice, together with any further charges that shall have accrued on the mailing thereof, including reasonable expenses for notices, advertising and sale. The balance, if any, of such proceeds shall be held as a special deposit by the trust company. The trust company shall file with such deposit a certificate stating the name and last known place of residence of the owner of the property sold, the articles sold, the price obtained therefor, and showing that the notices herein required were duly mailed and that the sale was advertised as required herein. The trust company holding such balance shall credit the same to the owner of the property, and pay the same to such owner, his, their or its assignee, or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such trust company for a period of five years, unclaimed by the person, partnership or corporation legally entitled thereto, it shall be treated as an unclaimed deposit. Whenever the contents of any such safe or box, so opened, shall consist either wholly or in part, of documents or letters or other papers of a private nature, such documents, letters or papers shall not be sold, but shall be retained by the trust company for a period of ten years from the time of the opening of the box, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of an officer of the trust company and a notary public not an officer or employee of the trust company. The provisions of this section do not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of a trust company against the person, partnership or corporation in whose name such safe or box stood, nor bar the right of a trust company to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the property deposited with it. (Laws 1915, p. 191.)

Sec. 11842. Moneys forfeited—to whom paid.—All moneys forfeited under the provisions of any section of this article, when recovered shall be paid into the state treasury for the use of the state banking department fund, where not otherwise provided by the Constitution. (Laws 1915, p. 193.)

Sec. 11843. Definitions of terms used in article.—Surplus. The term, "surplus," when used in this article, means the excess of assets over liabilities, including liability to stockholders.

Surplus fund. The term, "surplus fund," when used in this article, means a fund created pursuant to the provisions of this article by a trust company from its net earnings or undivided profits, which to the amount specified in this article is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as any such corporation has undivided profits.

Total profits. The term, "total profits," when used in this article, means the total amount of undistributed net earnings of any corporation to which this article is applicable from the date of its organization, including such portions of its surplus fund or guaranty fund as have been derived from net earnings or from undivided profits.

Undivided profits. The term, "undivided profits," when used in this article, means the credit balance of the profit and loss account of any corporation to which this article is applicable.

Net earnings. The term, "net earnings," when used in this article, means the excess of the gross earnings of any corporation to which this article is applicable over expenses and losses chargeable against such earnings during any dividend period.

Dividend period. The term, "dividend period," when used in this article, means the period from the date as of which the last dividend of any corporation to which this article is applicable was declared to the date selected for the declaration of the next dividend; or the period from the date when its corporate existence began to the date as of which the first dividend is declared.

Time deposits. The term, "time deposits," when used in this article, means all deposits the payment of which cannot legally be required within thirty days.

Demand deposits. The term, "demand deposits," when used in this article, means deposits payment of which can legally be required within thirty days.

Aggregate demand deposits. The term "aggregate demand deposits," when used in this article, means the deposits against which reserves must be maintained by trust companies, and includes total deposits, all amounts due to banks, bankers, trust companies and savings banks, the amounts due on certified and cashier's checks, and for unpaid dividends, less the following items:

1. Total time deposits.
2. The amounts due it on demand from banks, bankers and trust companies other than its reserve depositaries, including foreign exchange balances credited to it and subject to draft.
3. The excess due it from reserve depositaries over the amount required to maintain its total reserves.

Reserves on hand. The term, "reserves on hand," when used in this article, means the reserves against deposits kept in the vault of any corporation pursuant to the provisions of this article.

Reserves on deposit. The term, "reserves on deposit," when used in this article, means the reserves against deposits maintained by any corporation pursuant to this article in reserve depositaries, or in a federal reserve bank of which such corporation

is a member, and not in excess of the amount authorized by this article.

Total reserves. The term, "total reserves," when used in this article, means the aggregate of reserves on hand and reserves on deposit maintained pursuant to the provisions of this article.

Reserve depository. The term, "reserve depository," when used in this article, means a bank, trust company or banking corporation approved by the bank commissioner as a depository for reserves on deposit.

Stockholder. The term, "stockholder," when used in this article, unless otherwise qualified, means a person who appears by the books of a stock corporation to be the owner and holder of one or more shares of the stock of such corporation.

Population. The term, "population," when used in this article, means population as determined by the last state or federal enumeration; or when used in connection with the words "unincorporated village," as determined by the bank commissioner from the best available source of information.

Assessment. Wherever in this article the commissioner is authorized to levy an assessment against any corporation or person, because of its, or his, failure to do any act or because of the doing of any act by such corporation or person, the word "assessment" shall be construed as being synonymous with the word "forfeiture." (Laws 1915, p. 193.)

***Sec. 11844. Construction—effect of repeal.**—The provisions of this act, so far as they are the same as those of existing laws, shall be construed as a continuation of such laws and not as new enactments; and the repeal by this act of any provision of law shall not revive any law heretofore repealed or superseded; nor shall it affect any act done, liability incurred, or any right accrued and established, or any suit of prosecution, civil or criminal, pending or to be instituted, to enforce any right or penalty or to punish any offense under the authority of the repealed laws; and any person who at the time when said repeal takes effect holds office under any of the laws repealed shall continue to hold such office according to the tenure thereof. (Laws 1915, p. 195.)

*The "Act" referred to in Sec. 11844 was approved and became effective March 25, 1915 (Laws of 1915, page 102), and embraced articles I, II and III of this chapter, exclusive of amendment added thereto since its adoption and approval.

ARTICLE IV.

MERGER AND CONSOLIDATION OF TRUST COMPANIES.

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| <p>Sec.
11845. Trust companies may merge or consolidate.
11846. Agreement, how authorized, executed, and acknowledged.
11847. Agreement for merger shall contain, what.
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11849. Certified copies evidence.
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11851. Bank commissioner shall certify finding within thirty days.
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11856. Receiving company shall issue new certificates for old, when.
11857. Dissenting stockholder may receive reasonable value of his stock. Limitation, petition, hearing, appointment of appraisers, etc.
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11860. Cost of proceeding, how taxed.
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11865. Trust and fiduciary relations of old companies continue in new.</p> |
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Sec. 11845. Trust companies may merge or consolidate.—Any trust company or trust companies, heretofore or hereafter organized under the laws of this state, may be merged in any other such trust company, or may be consolidated with any other such trust company or trust companies, to form a consolidated corporation under this article, on compliance with the provisions of this act. (Laws 1919, p. 160.)

Sec. 11846. Agreement, how authorized, executed and acknowledged.—Each trust company which is to be a party to such merger or to such consolidation shall, upon being first authorized by its board of directors by the affirmative vote of a majority of all the members of such board, enter into an agreement with the other trust companies which are to be parties to such merger or to such consolidation, providing for such merger or such consolidation on the terms and conditions therein set out. Such agreement shall be in writing, and executed and acknowledged under the respective seals of such trust companies as are parties thereto; such execution and acknowledgment shall be in such form as now or hereafter required by law for execution and acknowledgment of instruments conveying real estate. (Laws 1919, p. 160.)

Sec. 11847. Agreement for merger shall contain what.—If such agreement provides for a merger, then it shall set out: First, the names of the companies thereto; second, the terms and condi-

tions of such merger, and the mode of carrying same into effect; third, the corporate name of the receiving trust company under such merger; such name may be the name in whole or in part of any trust company which is a party to such merger; fourth, the names of the persons who shall constitute the board of directors of the receiving company, after such merger shall have been accomplished, provided that the number and the qualifications of such directors shall be in accordance with the provisions of this chapter relating to the number and qualifications of directors of trust companies; fifth, such agreement shall further provide that the directors so named shall, after qualifying, divide themselves into classes in accordance with the provisions of this chapter, and that they may adopt new by-laws for the trust company for which they are so named as directors. (Laws 1919, p. 160.)

Sec. 11848. Agreement for consolidation shall contain what. If the agreement provides for a consolidation, then the agreement shall set out: First, the terms and conditions of such consolidation and the method of carrying same into effect; second, the name of the proposed corporation, which may be the name in whole or in part of any one or more of the corporations which are parties to the agreement; third, the name of the city or town and county in this state in which the consolidated corporation is to be located; fourth, the amount of the capital stock of such corporation; fifth, the number of shares into which it is divided and the par value thereof; sixth, that the shares have been subscribed by the persons named therein as the first board of directors as trustees for each of the stockholders of the contracting corporations, and that all of said capital stock has been paid up either in lawful money of the United States, or by the capital stock, surplus and undivided profits of the corporations which are parties to said agreement, provided that such part of the capital of the consolidated corporation as is paid by the capital, surplus or undivided profits of either one or more of the contracting corporations, shall be received only for the amount which may be approved by the bank commissioner therefor; seventh, and that the custody of all such cash and property has been placed in the care and control of the persons named as the first board of directors; eighth, and the number of directors and the names and addresses of the directors chosen for such consolidated corporation and that said directors shall, after qualifying, divide themselves into classes in accordance with the provisions of this chapter and that they may adopt new by-laws for such consolidated company; ninth, and the purposes for which the corporation is formed, which shall be limited to the purposes as then prescribed by law for trust companies under this chapter; tenth, and the number of directors necessary to constitute a quorum; eleventh,

and the duration of the corporation as may be then permitted by law; twelfth, such other provisions as may be necessary or proper to fully set out the rights of the respective contracting corporations, their stockholders and creditors and the plan of such consolidation. (Laws 1919, p. 161.)

Sec. 11849. Certified copies evidence.—A copy of the minutes of such proceedings of such respective boards, and a copy of such agreement certified and verified by the respective secretaries of the trust companies wherein such proceedings shall be had, shall be presumptive evidence of the action of such respective boards. (Laws 1919, p. 161.)

Sec. 11850. Verified copies of agreement and proceedings shall be submitted to bank commissioner.—A copy of such agreement so executed and such certified and verified copies of the proceedings of the respective boards of directors shall be submitted in duplicate to the bank commissioner for his approval, and he shall have full power and authority to approve or disapprove the same, provided that in case the bank commissioner shall disapprove such agreement so submitted, the companies which are parties thereto may submit another plan for a merger or a consolidation under the provisions of this chapter. (Laws 1919, p. 161.)

Sec. 11851. Bank commissioner shall certify finding within thirty days.—Such approval or disapproval by the bank commissioner shall be certified by him in writing to each trust company which is a party to such merger or such consolidation within thirty days after the date of submission of such agreement to him. (Laws 1919, p. 162.)

Sec. 11852. If approved, agreement shall be submitted to stockholders within sixty days—notice.—In case of approval by the bank commissioner, such agreement shall within sixty days after the date of such approval be submitted to the stockholders of each trust company which is a party to such merger or consolidation. The meeting of the stockholders of each such trust company for said purpose shall be called upon notice specifying the time, place and object thereof, addressed to each stockholder at his last known post office address and deposited, postage prepaid, in the post office at least two weeks prior to such meeting, and such notice shall be likewise published once a week for at least two successive weeks in at least one newspaper in each of the counties in which any of such trust companies has its place of business, and for the purpose of such notice the city of St. Louis shall be considered as a county. (Laws 1919, p. 162.)

Sec. 11853. Agreement binding if two-thirds stock of respective companies be cast for it.—At the time and place fixed by said notice each of the trust companies shall respectively hold a meeting of their respective stockholders for the purpose of considering said agreement, and if the stockholders of each of the trust companies respectively shall at their respective meetings vote two-thirds of the stock of their respective trust companies in favor of such agreement, then such agreement shall be valid and binding upon such trust companies. (Laws 1919, p. 162.)

Sec. 11854. Agreement for merger becomes effective on filing and recording of minutes, etc.—If such agreement shall be so approved and ratified by the stockholders of each of the respective trust companies, then in case such agreement provides for a merger, a copy of the minutes of the respective stockholders' meetings at which such agreement shall have been approved, with a copy of such agreement and the bank commissioner's approval thereof, all certified and verified by the respective secretaries of such meetings, shall be filed in the office of the bank commissioner and a like copy of such minutes, agreement and approval shall be filed with the secretary of each of the trust companies, which are parties to such agreement, and a like copy of such minutes, agreement and approval, together with an affidavit of the secretary of the receiving corporation in such merger showing the filing of such copies with the bank commissioner, as herein provided, and also the filing of such copies with the secretary of each of the trust companies, which are parties to such agreement, shall be filed for record and recorded in the office of the recorder of deeds of each county wherein is located the place of business of each trust company which is party to such agreement, it being understood that the city of St. Louis shall be considered as a county in regard to the filing and recording of such copies. Upon the filing for record of the copies as hereinabove required to be filed for record in the office of the recorder of deeds, the agreement and merger shall become effective according to its terms. (Laws 1919, p. 162.)

Sec. 11855. Agreement for consolidation becomes effective on filing and recording of minutes, etc., and payment of legal fees.—If such agreement shall be so approved and ratified by the stockholders of the respective trust companies, then in case such agreement provides for a consolidation of the trust companies which are parties thereto, a copy of the minutes of the proceedings of the respective stockholders' meetings at which such agreement shall have been approved, with a copy of such agreement and the bank commissioner's approval thereof, all certified and verified by the respective secretaries of such meet-

ings, shall be filed in the office of the bank commissioner and a like copy of such minutes, agreement and approval shall be filed with the secretary of each of the trust companies to said agreement, and a like copy of such minutes, agreement and approval together with an affidavit of the secretary of one of the consolidating trust companies, showing the filing of such copies with the bank commissioner, as herein provided, and also the filing of such copies with the secretary of each of the trust companies to such consolidating agreement, as herein provided, shall be filed for record and recorded in the office of the recorder of deeds in each county wherein is located the place of business of each trust company which is a party to such agreement. The city of St. Louis shall be considered as a county so far as the filing for record in the office of recorder of deeds of such copies is concerned. Upon the filing for record in the office of the recorder of deeds of a copy of such agreement with the approval of the bank commissioner, and the proceedings above prescribed, the agreement for the consolidation of the trust companies, which are parties thereto, shall take effect according to its terms, and the consolidation shall thereupon be complete, provided the legal fees for the incorporation of such consolidated trust companies shall have been paid to the state bank commissioner, the same as if a new corporation were organized for the same amount of capital authorized for such consolidated company. (Laws 1919, p. 163.)

Sec. 11856. Receiving company shall issue new certificates for old, when.—The receiving company under the merger, or the consolidated company may require the return of the original certificate or certificates held by each stockholder in either of the merging companies or in either of the consolidating companies, unless any such certificate or certificates have been lost or destroyed, and shall cancel said original certificates and issue in lieu thereof new certificate or certificates for such number of its own shares as such stockholders may be entitled to receive under the agreement providing for the merger or for the consolidation and according to the terms and conditions contained in the agreement for such merger or such consolidation; provided that if any such original certificate or certificates shall have been lost or destroyed, then, before issuance of new certificate or certificates in lieu thereof, such loss or destruction shall be proved by affidavit or otherwise to the satisfaction of the board of directors of such receiving or consolidated company, and indemnity satisfactory to such board shall be given. (Laws 1919, p. 163.)

Sec. 11857. Dissenting stockholder may receive reasonable value of his stock. Limitation, petition, hearing, appointment of appraisers, etc.—If any merger or consolidation takes effect un-

der the provisions of this chapter, then any stockholder of any company which is a party to such agreement not voting in favor of such agreement to merge or consolidate at the stockholders' meeting aforesaid shall be entitled to receive from the receiving company, in case of a merger, or from the consolidated company in case of a consolidation, the reasonable value of his stock at the time of such merger or consolidation, which value shall be determined in the following manner: Within sixty days after the taking effect of such merger or consolidation, such dissenting stockholder may apply to the circuit court of the county wherein the principal place of business of the receiving company, in case of a merger, or the consolidated company, in case of a consolidation, is located, by petition for the appointment of appraisers to value his stock. At any time during the above named sixty days any other dissenting stockholder or stockholders, in any company which is a party to such agreement, may file his or their petition in the court wherein such proceeding is pending, for the determination of the value of their respective shares of stock affected by such merger or consolidation. Any stockholder who does not become a party to such proceeding within the time herein prescribed, shall be conclusively presumed to have assented to such merger or consolidation and shall be bound thereby as fully and as firmly as if he had voted therefor. Within five days after the expiration of said period of sixty days, the court or judge in vacation, wherein such proceeding is pending, shall issue an order in which he shall fix the time and place of the hearing under the petition or petitions then pending, which shall not be more than twenty days after the issuance of said order. The court or judge shall cause to be served upon each party, or his attorney of record, at least ten days before the hearing, a copy of the order fixing the time and place of hearing. The hearing shall be before the court or judge thereof in vacation, and at such hearing the court or judge shall cause all petitions filed in the cause to be consolidated, and if the court or judge in vacation, shall find that each of the parties to such proceeding has been notified of the time and place of hearing at least ten days before such hearing, then the court or judge in vacation shall appoint three disinterested householders, of the county in which the proceeding is pending, not related to either of the parties to the proceeding, as appraisers to ascertain and determine the value of the shares of stock of such dissenting stockholders, and upon such appointment the court or judge in vacation shall fix the time and place of the first meeting of such appraisers; each of the appraisers shall qualify by taking and subscribing an oath that he will faithfully and impartially discharge the duties imposed upon him and will render a true appraisalment of the value of the stock of the

dissenting stockholders in such proceeding. Should any appraiser fail to qualify or serve, the court or judge shall, by an order duly entered, fill such vacancy. (Laws 1919, p. 164.)

Sec. 11858. Finding and report of appraisers—compensation—notice to be given by clerk of court.—The appraisers so appointed and qualified shall meet at the time and place so designated by the court or judge, and shall proceed to ascertain and determine the reasonable cash value of the shares of stock of the respective dissenting stockholders at the time of such merger or consolidation. For such purpose each of the appraisers shall have the right to administer oath and the appraisers may hear testimony offered by any party to such proceeding. At the conclusion of such hearing the appraisers shall forthwith determine the value of the shares of stock of each of the dissenting stockholders to such proceeding. The concurrence of at least two of the appraisers shall be necessary to constitute a finding by the appraisers. The report of the appraisers shall be in writing, signed and acknowledged by at least two of them, and filed with the clerk of the court in which the proceeding is pending, together with their qualifying affidavits. The court may fix the compensation to be awarded appraisers, which compensation shall be taxed as costs in the case. The clerk of such court shall, upon the filing of such award or finding by the appraisers, notify each of the parties or their attorneys of record, of the filing of such report. (Laws 1919, p. 165.)

Sec. 11859. Exceptions to appraisal, review, new appraisal, final judgment—stock to be surrendered.—Within twenty days after the filing of such appraisal, exceptions in writing may be filed thereto by any party interested, and upon such exceptions being so filed the court shall review the appraisal and may order, on good cause shown, a new appraisal by other appraisers or the court may hear evidence touching matters in controversy and take an accounting to ascertain and determine the value of such shares and may make such order in the premises as justice, equity and right may require. If no exceptions be so filed to the report of the appraisers, then the court shall thereupon enter final judgment approving such report. If any of the orders herein provided for, are made in vacation, then such vacation orders shall be considered and confirmed by the court. In its judgment the court shall ascertain and determine the value of the shares of stock of the merging trust company or trust companies or of the consolidating trust companies, at the time to such merger or consolidation. When the receiving trust company under such merger or the consolidated trust company under such consolidation, shall have paid the value of such stock as determined by

the court, then such stock shall be surrendered and such stockholder shall cease to have any interest in such stock or in the corporate property of such company and such stock may be held and disposed of by such company for its own benefit. (Laws 1919, p. 165.)

Sec. 11860. Cost of proceeding, how taxed.—The cost in the proceedings to determine the value of stock, as above provided for, up to and including the filing of the report of the appraisers, shall be paid by the receiving or consolidated trust company and the court shall make and enter such orders and judgments, as to subsequent costs as to the court may seem just and proper in the premises. (Laws 1919, p. 166.)

Sec. 11861. Corporate existence of old merged into new company—title to property, etc.—The corporate existence of the merging company or companies shall be merged into that of the receiving trust company, or in the event of consolidation, the corporate existence of the consolidating companies shall be merged into that of the consolidated trust company; and all and singular the rights, privileges and franchises, and the rights, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing to which either of such companies so merging or consolidating shall be entitled at law or in equity, shall be fully and finally and without any right of reversion, transferred to and vested in the receiving trust company in case of merger, or in the consolidated trust company, in case of a consolidation, without further act or deed, and such receiving company or such consolidated company shall have and hold the same in its own corporate right as fully as the same was possessed and held by either of the merging or consolidating corporations from which such rights were, by operation of the provisions of this article, transferred. (Laws 1919, p. 166.)

Sec. 11862. New company succeeds to fiduciary relations of old, etc.—The receiving corporation under merger of the new corporation under consolidation, shall become, without further act or deed, the successor of the merging or of the consolidating corporation, in any and all fiduciary capacities in which such merging or consolidating corporation may be acting at the time of such merger or consolidation, and shall be liable to all beneficiaries as fully as if such receiving or consolidating corporations had continued their separate corporate existence. All and singular the rights and privileges and the right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest

or asset of conceivable value or benefit then existing to which either of such companies so merging or consolidating shall be entitled at law or in equity, in any fiduciary capacity shall fully and finally, and without any right of reversion, be transferred to and vested in the receiving or consolidated corporation, without further act or deed; and such receiving or consolidated corporation shall have and hold the same as fully and in the same fiduciary capacity and for the same purposes, and with the same powers, duties, responsibilities and discretion, as the same were possessed and held by the merging or consolidating corporation from which they were, by operation of the provisions of this article, transferred. (Laws 1919, p. 166.)

Sec. 11863. New company liable for obligations of old.—The rights, obligations and relations of either of the merged companies or of the consolidating companies, in respect to any person, creditor, depositor, trustee or beneficiary of any trust shall remain unimpaired, and the receiving corporation or the consolidated corporation shall, when the merger or consolidation becomes effective, as in this chapter provided, succeed to all such relations, obligations, trusts, powers and liabilities and shall execute and perform all duties in relation thereto in the same manner as though it had itself assumed or been clothed with such relation, trust or power, or had itself incurred the obligation or liability; and the liabilities and obligations to creditors of either of the merged companies, or of either of the consolidating companies shall not be impaired by such merger or consolidation; nor shall any obligation or liability of any stockholder in any corporation which is a party to such merger or consolidation be affected by any such merger or consolidation, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger or consolidation. (Laws 1919, p. 167.)

Sec. 11864. Pending actions to be prosecuted—substitution. A pending action or other judicial proceeding to which any corporation that shall have been so merged or so consolidated, as a party, shall not be deemed to have abated or to have discontinued by reason of the merger or consolidation, but may be prosecuted to final judgment, order or decree in the same manner as if the merger or consolidation had not been made; or the receiving corporation or the consolidated corporation may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other corporation if the merger or consolidation had not occurred. (Laws 1919, p. 167.)

Sec. 11865. Trust and fiduciary relations of old companies continues in new.—If any trust company which merges with or shall have merged with another, or if any trust company which consolidates with or shall have consolidated with another or other trust companies to form a consolidated trust company, shall be nominated and appointed or shall have been nominated or appointed as executor, guardian, curator, administrator, agent or trustee or in any other trust relation or fiduciary capacity in any will, trust agreement, trust conveyance or any other conveyance or instrument whatsoever prior to such merger or consolidation (even though such will, trust agreement, trust conveyance, or other conveyance or instrument shall not become operative or effective until after such merger or consolidation shall have become effective) every such office, trust relationship, fiduciary capacity and all of the rights, powers, privileges, duties, discretions and responsibilities, so provided to devolve upon, vest in, or inure to the company so nominated or appointed, shall fully and in every respect devolve upon, vest in and inure to and be exercised by the trust company into which such company so designated in such capacity shall be or shall have been merged, or shall devolve upon, vest in, inure to and be exercised by the consolidated trust company formed by any consolidation to which the trust company so designated shall have been a party, whether there be one or more successive mergers or consolidations. (Laws 1919, p. 167.)

ARTICLE V.

SAVINGS BANKS AND SAFE DEPOSIT INSTITUTIONS.

Sec.	Sec.
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Sec. 11866. How incorporated—articles to contain what.—

Any five or more persons who shall have associated themselves by articles of agreement, in writing, as provided by law for the purposes included under section 11871 of this article, may be incorporated under any name or title designating such business. The articles of agreement shall set out:

First—The corporate name of the proposed corporation, which shall not be the name of any other corporation heretofore incorporated in this state for similar purposes, or an imitation of such name.

Second—The name of the city or town and county in which the corporation is to be located.

Third—The amount of capital stock of the corporation, the number of shares of one hundred dollars each, into which it is divided, and the par value thereof; and that the entire amount thereof has been subscribed in good faith, and actually paid in lawful money of the United States, and is in possession of the persons named as the first board of directors.

Fourth—The names and places of residence of the several shareholders, and the number of shares subscribed by each.

Fifth—The number of the board of directors, and the names of those agreed upon for the first year.

Sixth—The number of years the corporation is to continue, which in no case shall exceed fifty years.

Seventh—The purposes for which the corporation is formed. (R. S. 1909, § 1142.)

Sec. 11867. Articles to be signed and recorded, etc.—The articles of agreement shall be signed and acknowledged by the parties thereto, and recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located, and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner, who shall, if he finds that all the requirements of the preceding section have been fully complied with, and that full payment has been made, of all incorporation or other fees and charges required by law, thereupon give a certificate that said corporation has been duly organized and the amount of its capital stock; and such certificate shall be taken by all courts of this state as evidence of the corporate existence of such corporation. The persons so acknowledging such articles of association and their successors shall, for the period not to exceed fifty years next succeeding the issuing of such certificate by the bank commissioner, be a body corporate, and by such name they and their successors shall be entitled to have, possess and enjoy all the rights, powers and privileges conferred by law upon corporations, subject to the provisions of this article. (R. S. 1909, § 1143.)

Sec. 11868. Capital stock, amount required.—The capital stock of any corporation created under this article shall not be less than ten thousand dollars in cities having a population of fifty thousand inhabitants or under; and not less than fifty thousand dollars in cities having a population of more than fifty thousand and less than one hundred and fifty thousand inhabitants; and not less than one hundred thousand dollars in cities having a population of one hundred and fifty thousand or over—the entire amount of capital stock to be subscribed for in good faith, and actually paid up in lawful money of the United States at the time of the filing of the articles of association, which capital stock shall be regarded as a guaranty fund for the security of depositors, and shall be invested as provided in sections 11871 and 11872 of this article. (R. S. 1909, § 1144.)

Sec. 11869. Board of directors—how elected—term.—The property and business of the corporation shall be controlled and managed by a board of directors, not less than five nor more than thirteen in number, who shall be stockholders of the corporation, and a majority of whom shall be *bona fide* citizens of this state, to be elected by ballot by the shareholders of the corporation for one year, at such time and place as shall be directed by the by-laws of the corporation, of which time and place at least two weeks' notice shall be published in some newspaper published at least once a week in the city or county in which the corporation is located. Such election shall be made by such of the shareholders as shall attend in person or by proxy, in writing. In case the election shall not be made on the day named, the corporation shall not thereby be dissolved, but an election may be held at any other time agreeable to the by-laws of the corporation; and the persons so elected shall hold their office until others are elected and qualified. If the number of directors shall exceed five, they shall, as soon as may be, after the organization, divide themselves by ballot into three classes, of equal number as may be, designated the first, second and third class, of which the first class shall remain in office one year, the second class two years, and the third class three years; and at each annual election conducted in the manner hereinbefore designated, directors shall be elected for the term of three years, to fill the vacancies created by the retiring class. In case of death or resignation of one or more of said directors, the survivors shall fill the vacancy until the next election. (R. S. 1909, § 1145.)

Sec. 11870. Powers and duties of board of directors—election of officers.—The directors shall elect from their number a president, one or more vice-presidents and secretary and treasurer; and may appoint such other officers and agents as they may

deem necessary for the proper conduct of the business of the corporation, and may allow them reasonable compensation for services rendered; and a vote of a majority of the full board shall be requisite for the appointment of any officer receiving a salary therefrom, or to fix or to increase the salary of any officer. No person shall be disqualified for being director by reason of his being a director or officer of a banking or saving institution organized under the laws of this state. The board of directors of any such corporation shall have power, from time to time, to make such by-laws, rules and regulations as they may think proper for the election of officers, for prescribing their respective powers and duties, and the manner of discharging the same, for the appointment and duties of committees, and generally, for transacting, managing and directing the affairs of the corporation: *Provided*, such by-laws, rules and regulations be not repugnant to nor inconsistent with the provisions of this article, or the Constitution and laws of this state or the United States. (R. S. 1909, § 1146.)

Sec. 11871. Purposes for which corporation may be created—investment of deposits.—Corporations may be created under this article: First, for the purpose of receiving, for accumulation and safe-keeping, any deposit of money, from any person, corporation or society, and investing, holding and repaying the same, crediting and paying interest thereon, as in this article authorized and provided, and not otherwise; and secondly, also, at its option, in connection therewith, for the purpose of taking and receiving as bailee for safe-keeping and storage only, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind, and other valuables, and guaranteeing their safety, upon such terms and for such compensation as may be agreed upon; and to let out vaults, safes and other receptacles for the uses, purposes and benefits of such corporation. All sums so received, except those held as bailee for safe-keeping and storage only, and the income derived therefrom, and all moneys entrusted to any such corporation, by order of court or other lawful authority, shall be invested only as follows:

First—In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged for the payment of the interest and principal.

Second—In bonds of this state bearing interest.

Third—In bonds of any state in the Union that has not, within five years previous to making such investments by such corporation, defaulted in the payment of any part of either principal or interest thereof.

Fourth—In bonds of any city, county, town, township or school district of this state that has not defaulted in the payment

of any part of either principal or interest thereof, within five years previous to making such investment; *and provided*, such bonded debt does not exceed five per cent.

Fifth—In the bonds of any city, town or county which had, in each case, at the time of the investment, more than twenty thousand inhabitants, as ascertained by the United States or state census made next preceding such investment in the states of Illinois, Ohio, Indiana, Michigan, Iowa, Kansas, Nebraska, Wisconsin, Colorado or Texas, issued pursuant to the authority of any law of such states: *Provided*, the entire bonded indebtedness of such city or county shall not exceed five per cent. of the assessed value of the taxable property therein, including the issue of bonds in which said investment is made, as shown by the last assessment preceding the investment; *and provided further*, that such city, town or county, or state in which it is situated, has not defaulted in the payment of any part of either principal or interest thereof within five years previous to making such investment. It shall not be lawful for any savings institution organized under this article to invest more than twenty-five per cent. of its assets in the bonds of cities, towns or counties situated outside of this state, nor to invest more than three per cent. of its assets in the bonds of any one of such cities, towns or counties, nor to invest in more than ten per centum of all the bonds issued by any such city, town or county, nor to make any investment in the bonds of any city, town or county situated out of this state, which had been or shall be issued to aid in the construction of any railroad.

Sixth—In the first mortgage bonds of any steam railway, the income of which is sufficient to pay all operating expenses and fixed charges, and which is completed and operated, wholly or in part, in the following named states: Missouri, Indiana, Iowa, Minnesota, Kansas, Nebraska, Colorado, Michigan, Illinois, Wisconsin, Arkansas, Texas and Ohio, and which has paid the interest as it became due on its bonds for three years next preceding such investment, or in the first mortgage bonds of the Central Pacific, Northern Pacific, Union Pacific, New York Central, West Shore and Pennsylvania railway companies.

Seventh—In bonds or notes secured by first mortgages or deeds of trust on unencumbered real estate, worth at least twice the amount loaned thereon; but in case the loan is on unimproved and unproductive real estate, the amount loaned shall not be more than forty per cent. of its actual value; but not to exceed sixty per cent. of the whole amount of the funds of the corporation shall be so loaned or invested; and no investment in any bond or notes so secured shall be made, except upon the report of a committee charged with the duty of investigating the same,

who shall certify to the value of the premises mortgaged, according to their best judgment, and such report shall be filed and preserved among the records of the institution.

Eighth—In real estate, subject to the provisions of section 11872 of this article.—It shall be the duty of the directors of any such corporation, as soon as practicable, to invest such fund of money, by purchase or otherwise, in the securities named in sections 11871 and 11872 of this article, with power from time to time to sell and reinvest the proceeds of such investment; but for the purpose of meeting current payments and expenses in excess of the receipts, any of the securities may be sold or pledged; and there shall be kept an available cash fund of not less than fifteen per cent. of the whole amount of its assets, and the same, or any part thereof, together with the current receipts over the payments, may be kept on hand or on deposit, payable on demand, in any bank or banking association in the state of Missouri, organized under any law of this state or of the United States, or with any safe deposit company or trust company incorporated under the laws of this state. The deposits in any one bank, safe deposit or trust company shall not exceed twenty per cent. of the total deposits, capital and surplus of the depositing bank. (R. S. 1909, § 1147.)

Sec. 11872. May purchase and sell real estate, when.—It shall be lawful for such corporation to purchase, hold, sell and convey real estate, as follows:

First—A plot whereon is erected or to be erected a building or buildings requisite for the convenient transaction of its business, and from portions of which, not required for its own use, a revenue may be derived, the cost not to exceed the sum of one hundred thousand dollars, except in cities of over 300,000 inhabitants, when the cost shall not exceed two hundred and fifty thousand dollars.

Second—Such as shall be purchased by it at sales upon the foreclosure of mortgages or deeds of trust owned by such corporation, or upon judgments or decrees rendered for debts due to it, or purchased or taken in settlements to secure such debts; and all such real estate mentioned in this clause shall be sold by such corporation within five years after the same shall be vested in it, unless the bank commissioner shall extend the time within which such sale shall be made. No such corporation, nor any person acting in its behalf, shall negotiate, take or receive a fee, brokerage, commission or gift, or other consideration, for or on account of a loan made by and in behalf of such corporation other than appears on the face of the note or contract by which such loan purports to be made; but nothing contained herein shall apply to any reasonable charge for services in the examina-

tion of titles and the preparation of conveyance to such corporation as security for its loans. All sums paid for services, fees or otherwise, to a member of the board of directors shall be reported in detail at each regular meeting of the directors. All applications for loans shall be made in writing through the treasurer of the corporation, who shall keep a record thereof, showing the date, name of applicant, amount asked for and the security offered, and shall cause the same to be presented to the board of directors. (R. S. 1909, § 1148.)

Sec. 11873. Forbidden to deal in certain property.—It shall be unlawful for any such corporation to deal or trade in real estate, except as provided in section 11872 of this article, or to deal or trade in goods, wares and merchandise or commodities whatever, except as authorized by the terms of this article, and except such personal property as may be necessary in the transaction of its business as by this article authorized; or to loan money upon or to discount or deal in notes, bills of exchange or other personal security, or to transact any banking business, whether of issue, deposit or discount. The board of directors may, however, make loans to the depositors, not exceeding fifty per cent. of the amount on deposit by such depositor at the date the loan is made; and in such case the deposit and the book of the depositor shall be held by the corporation as collateral security for the payment of such loan. (R. S. 1909, § 1149.)

Sec. 11874. Directors not to borrow funds of association—failure to attend meetings.—No director shall, as such, directly or indirectly, receive any payment or emolument for his services, except as hereinafter provided; and no director or officer of such corporation shall, directly or indirectly, for himself or as the agent or partner of others, borrow any of the funds of the corporation or in its custody, or in any manner use the same, except to make necessary current payments for the corporation, or to make investments or to deposit for safety, under the direction and authority of the board of directors; nor shall any director or officer of such corporation be an indorser or surety, or in any manner be an obligor for moneys loaned by or borrowed of the corporation. Whenever a director of such corporation shall borrow, directly or indirectly, any of the funds of the institution, of which he is a director, or become surety or guarantor for any money borrowed of or loan made by such corporation, or upon his failure to attend regular meetings of the board, or to perform any duties devolved upon him as such director, for three successive months without having been excused by the board for such failure, the office of such director shall become vacant; but the director vacating his office for failure to attend meetings or to discharge his duties

may, in the discretion of the board, be eligible to re-election. (R. S. 1909, § 1150.)

Sec. 11875. Meetings of board of directors.—Regular meetings of the board of directors shall be held at least once in each month for the purpose of receiving the reports of the officers and committees, and for the transaction of other business. A quorum at any regular, special or adjourned meeting shall consist of not less than a majority of the directors, but less than a quorum may adjourn from time to time, or until the next regular meeting. (R. S. 1909, § 1151.)

Sec. 11876. What may be received as deposits.—Corporations formed under the provisions of this article may receive deposits, exclusive of money and property received as bailee for safe-keeping and storage only, as follows, to wit: Those having a paid-up capital of ten thousand dollars may receive deposits to the amount of two hundred thousand dollars; those having a paid-up capital of twenty-five thousand dollars may receive deposits to the amount of five hundred thousand dollars; and those having a paid-up capital of fifty thousand dollars, deposits to the amount of one million dollars; and no greater amount of deposit shall be received without a like proportionate increase of cash capital. Deposits shall be paid to depositors, or their representatives, when requested, under such regulations as the board of directors may prescribe, not inconsistent with the provisions of this article, which regulations shall be printed and conspicuously posted in all places where deposits are received, accessible and visible to all depositors; but no alterations in such regulations shall, in any manner, affect depositors in respect to any deposits or interest thereon, made prior to such alteration; and it shall be lawful to require sixty days' written notice of the withdrawal of any deposit. Any account may be closed at any time upon such notice to the depositor, and after such notice the deposit shall cease to draw interest: *Provided*, nothing in this article shall be so construed as to prevent the issuing of certificates of deposit payable on demand. (R. S. 1909, § 1152.)

Sec. 11877. Deposits by minors or females.—Whenever any deposit shall be made by or in the name of any person being a minor, or a female, being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, together with the interest thereon, upon production of and proper entry in the pass-book at the time of such payment, and in accordance with the by-laws of the corporation, to the person in whose name the deposit shall have been made, and the receipt or acquittance of

such minor or female shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the corporation; and whenever any deposit shall be made by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given, in writing, to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made. (R. S. 1909, § 1153.)

Sec. 11878. Pass-books—limit upon individual deposits.—

A pass-book shall be issued to each depositor, containing the rules and regulations adopted by the board of directors governing deposits, in which book shall be entered each deposit made by and each payment made to such depositor; and no payment or check against any such savings account shall be made unless accompanied by and entered in the pass-book issued therefor, except for good cause and on assurances satisfactory to the officers of the bank. At least once in every three years, the pass-books of all depositors shall be called in and verified in such a manner as the board of directors may elect. The directors may provide for making payments in case of loss of pass-book or other exceptional case, where its production may produce loss or serious inconvenience to the parties, and every such corporation shall have the right to limit the aggregate amount which they will receive from any one person or society to such sum as they may deem expedient, and may, in their discretion, refuse to receive the sum offered, and may also at any time return all or any part of any sum received: *Provided*, that the aggregate amount that may be received from any one individual or corporation shall not exceed four thousand dollars, inclusive of dividends; but this limitation shall not apply to moneys arising from judicial sales or trust funds, or, if received pursuant to order of a court of record, or to moneys or property received as bailee for safe-keeping and storage only. (R. S. 1909, § 1154.)

Sec. 11879. Capital stock limited to what.—No corporation formed under the provisions of this article shall have a capital stock of more than five million dollars, and any such corporation may increase its capital stock, in any amount within the limit of this article, but all increase of stock shall be subscribed for in good faith, and shall be paid up in full in lawful money of the United States at the time of filing the certificate of increase. (R. S. 1909, § 1155.)

Sec. 11880. Rate of interest allowed depositors.—It shall be the duty of the board of directors to regulate, from time to time, the rate of interest to be allowed to depositors out of the

net profits, and to pay or credit the same semi-annually on semi-annual interest dates, to be fixed by the by-laws: *Provided, however,* that the directors of any such corporation may classify its depositors according to the character, amount and duration of their dealings with the corporation, and regulate the interest allowed in such manner that each depositor shall receive the same ratable portion of interest as all others of the same class. (R. S. 1909, § 1156.)

Sec. 11881. Dividends and guaranty fund.—Whenever interest, at the rate of not less than three per centum per annum, shall have been paid or credited out of the net profits of the current six months, on all savings or trust funds which may be entitled thereto, the board of directors may, out of the remaining net earnings of such six months, if any there be, declare and pay a dividend on the capital stock of the corporation, not exceeding at the rate of six per centum per annum on the par value thereof: *Provided, however,* that no such dividend shall be declared or paid until at least one-tenth of the net profits of the corporation for such period of six months shall be carried to the credit of a guaranty fund, until such fund equals the amount of the capital stock, which fund shall be invested as provided in sections 11871 and 11872 and held as additional security for the depositors. (R. S. 1909, § 1157.)

Sec. 11882. Excess of profits to be applied to arrears of dividends.—If, for any period of six months, the net profits shall not be sufficient to pay a dividend on the capital stock amounting to three per cent. for such six months, then, if there are any net profits in any succeeding six months' period or periods over the interest required to be paid depositors for such period or periods, and the amount required to be carried to the guaranty fund, such excess of net profits shall be applied to the arrears of the dividends on the capital stock; and until such arrears of dividends are paid in full, no part of the net profits shall be credited on the indemnity fund, as provided in section 11883 or to the payment of the extra interest to the depositors, as provided in section 11884. (R. S. 1909, § 1158.)

Sec. 11883. Indemnity fund.—Whenever the guaranty fund amounts to a sum equal to the capital stock of the corporation, and after interest on the deposits and dividends on the capital stock has been paid, as provided in sections 11881 and 11882, the board of directors shall, at the time of making the regular semi-annual dividends, set aside and reserve from the remaining net profits which have accumulated during the preceding six months, a sum not exceeding one-fourth of one per cent. of the total deposits on such interest day, to be known as an indemnity

fund, until such fund amounts to ten per cent. of the whole deposits, and such fund shall thereafter be maintained and held to meet any contingency or loss from depreciation of securities or otherwise. (R. S. 1909, § 1159.)

Sec. 11884. Net profits divided among certain depositors.—Once in every term of three years, if the profits which have accumulated over and above the guaranty and indemnity funds, as provided in sections 11881 and 11883, amount to one per cent. of the deposits which have remained in such corporation for at least one year next preceding, such net profits shall be divided among the depositors whose deposits shall have remained therein at least one year next preceding, in proportion to the amount of interest which has been paid on their deposits during the three years then next preceding; but nothing in this article contained shall be so construed as to require the payment of any interest on money or property received as bailee for safe-keeping and storage only. (R. S. 1909, § 1160.)

Sec. 11885. Interest or dividends not to be declared until examination is made.—No interest or dividends shall be paid or declared until the board of directors of such corporation cause an examination to be made of the assets and securities, and find the amount of such interest and dividend has been actually earned and accrued, and no interest or dividend shall be paid or declared unless authorized by a vote of the board of directors, at a regular meeting, duly entered on the minutes. (R. S. 1909, § 1161.)

Sec. 11886. Notices and rules.—Notices and rules posted conspicuously in the room where the business of such corporation is transacted, shall be equivalent to a personal notice to each person or party interested. (R. S. 1909, § 1162.)

Sec. 11887. Guaranty and indemnity funds.—In determining the per cent. of the guaranty and indemnity funds so held, the interest-bearing notes and bonds shall not be estimated above their par value, or above their market value, if below par; its bonds and mortgages and deeds of trust not in arrears for interest for a period longer than one year, at their face; its real estate at not above cost. All debts due any savings bank or institution on which the interest is past due for a period of twelve months, unless well secured and in process of collection, shall be considered as bad debts, and shall be charged to profit and loss account at the expiration of that time. (R. S. 1909, § 1163.)

Sec. 11888. Compensation of directors acting as officers.—It shall be lawful for directors acting as officers of such corporation, whose duties require and receive regular and faithful attendance at the institution, to receive such compensation as the majority

of the board of directors shall deem just and reasonable; but such majority shall be exclusive of any director to whom such compensation shall be voted. But it shall not be lawful to pay the directors, as such, for attendance at the meetings of the board. (R. S. 1909, § 1164.)

Sec. 11889. Officers to give bond.—The board of directors shall, from time to time, require from the officers, employes and agents such security for their fidelity and good conduct as may be necessary. (R. S. 1909, § 1165.)

Sec. 11890. Report to be made to bank commissioner—contents.—Every such corporation shall, on or before the first day in November in each year, make a report, in writing, to the bank commissioner, in such form as he may prescribe, of its condition on the first day of September preceding. Such report shall state the amount loaned on bond and mortgage, together with a list thereof, the par value and the estimated market value of all bond investments, designating each particular kind and amount invested in cash; the amount loaned upon pledge of deposits, with a statement of the amount held as collateral for such loans; amount of cash on hand and on deposit in banks, safe deposit or trust companies, with their names and amount deposited in each; the amount of all assets, including interest accrued and not enumerated above, and such other information as the bank commissioner may require. (R. S. 1909, § 1166.)

Sec. 11891. *Id.* What report shall state.—Such report shall also state all liabilities on the morning of the first day of September, the amount due depositors, which shall include any dividend to be credited to them for six months on that day, and any other claims against the corporation which are or may be charged against its assets. Such report shall also state the amount of all deposits made during the fiscal year ending that day, and the amount drawn out during the same period; the whole amount of interest received and earned, and the amount of interest paid and credited to depositors, together with the amount of each semi-annual credit of interest; the number of accounts opened and reopened, the number closed during the year, and the number of open accounts at the end of such year, and such other information as the bank commissioner may require. (R. S. 1909, § 1167.)

Sec. 11892. Report to be verified—directors to examine books.—Such report shall be verified by the oath of the two principal officers of the institution, and the statement of the assets shall be verified by the oath of at least three of the board of directors, who shall examine the same pursuant to the requirements of this section. It shall be the duty of not less than three of the directors, on or about the first day of September of each

year, to thoroughly examine the books, vouchers and assets of such institution, and its affairs generally; and the statement of assets and liabilities reported to the bank commissioner on the first day of November of such year shall be based upon such examination; but nothing herein contained shall be construed as prohibiting the directors from requiring such examination at such other times as they shall prescribe. Any such corporation failing to furnish to the bank commissioner any report or statement required by this article shall forfeit the sum of one hundred dollars per day for every day such report or statement shall be withheld, and the bank commissioner may maintain an action, in his name of office, to recover such penalty, and when collected the same shall be paid into the treasury of the state, and be applied to the state banking fund; but the bank commissioner may, for sufficient cause, extend the time for making such report, not exceeding thirty days. (R. S. 1909, § 1168.)

Sec. 11893. Bank commissioner to report to general assembly.—It shall be the duty of the bank commissioner, on or before the first day of February during each general assembly, to communicate with the legislature a statement of the condition of every such corporation from which a report has been received for the past two preceding years; also, the name and location of savings banks and institutions for savings authorized by him during the previous two years, with the date of their incorporation. (R. S. 1909, § 1169.)

Sec. 11894. Bank commissioner to examine.—It shall be the duty of the bank commissioner once in two years, either personally or by his deputy or by one or more examiners appointed by him, to visit and examine every such corporation in this state. The bank commissioner shall also have power in like manner to examine any such corporation whenever, in his judgment, it may be deemed necessary or expedient. The bank commissioner and every such examiner shall have power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person for the purpose of such examination, by summons, subpoena, or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in the courts of record in this state; and all books and papers, which it may be deemed necessary to examine by the bank commissioner or examiner so appointed, shall be produced, and their production may be compelled in like manner. The expense of every such special examination, if any, shall be paid by the corporation examined, in such amount as the bank commissioner shall certify to be just and reasonable. The result of any such examination shall be

certified by the examiners, or one of them, upon the records of the corporations examined, and the result of all the general examinations during the previous year shall be embodied in the annual report of the bank commissioner required by this article to be submitted to the legislature. (R. S. 1909, § 1170.)

Sec. 11895. Duty of bank commissioner when institution is doing unsafe or unauthorized business—proceedings.—Whenever it shall appear to the said bank commissioner, from any such examination or report, that any such corporation is conducting its business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal and unsafe or unauthorized practices, and strict conformity with the requirements of the law and with safety and security in its transactions; and whenever any such corporation shall refuse or neglect to make any such report as is hereinbefore required, or to comply with any such orders as aforesaid, or whenever it shall appear to the bank commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, or that extraordinary withdrawals of money are jeopardizing the interest of remaining depositors, or that any director or officer has abused his trust or been guilty of misconduct or malversation in his official position injurious to the institution, or that it has suffered a serious loss by fire, burglary, repudiation or otherwise, he shall communicate the facts to the attorney-general, who shall thereupon institute such proceedings as the nature of the case may require. Such proceedings may be for an order restraining such institution from paying out more than ten per cent. of its funds in any six months, or until the further order of the court, or for the removal of one or more of the board of directors, or for the appointment of a receiver or receivers to wind up the affairs of such corporation. And the court before which such proceedings shall be instituted shall have power to grant such orders, and, in its discretion, from time to time, modify or revoke the same, and to grant such relief as the evidence, situation of the parties and the interests involved shall seem to require; and whenever, in such proceedings, an order shall be granted restraining such corporation from paying out or disposing of any moneys or property of or held by such corporation, the bank commissioner may, and if directed by the court shall, take temporary possession of all the assets, property and rights of or held by such corporation, and hold such possession until restored to the directors, or until further order of the court. (R. S. 1909, § 1171.)

The appointment of a receiver without notice to creditors on the *ex parte* application of an insolvent corporation is void. *Jones v. Schaff Bros. Co.*, 187 A. 597, 174 S. W. 177.

Sec. 11896. What corporations may accept provisions of this article.—Any bank, trust or safe deposit company organized under the laws of this state, whose capital is fully paid up and unimpaired, may, with the consent of all its stockholders, accept the provisions of this article by filing with the bank commissioner a certificate of such acceptance, signed by its president and secretary. The consent of the stockholders to such acceptance may be in writing, or by vote of the stockholders at any meeting at which all the stockholders are represented, and vote in favor of such acceptance. Upon filing of such certificate of acceptance, such corporation shall thereupon become subject in all respects to the provisions of this article, and to the general laws of this state relating to corporations, with like effect as if it had been originally incorporated under the provisions of this article; and it shall take such action as may be necessary to make its corporate organization conform in all respects to the provisions of this article, and until such action is taken it shall not transact any corporate business: *Provided*, that such corporation shall be allowed two years after filing such certificate of acceptance within which to change any investments made prior to the filing of such certificate of acceptance. (R. S. 1909, § 1172.)

Sec. 11897. How corporation may dissolve.—Whenever the board of directors of any solvent corporation organized under this article shall deem it necessary, expedient or desirable to close the business of the corporation, they shall call a meeting of the stockholders to vote upon the proposition to close the business of such corporation, first having given sixty days' notice thereof by publication once every week in a newspaper published in the county or city in which such corporation is located, or if there be no newspaper published in the county or city, then the nearest county in which such newspaper is published, and also by mailing notices thereof, at least sixty days prior to the day fixed for such meeting, addressed to stockholders at their usual place of business or residence. The vote upon such proposition shall be taken by ballot, and the resolution and vote thereon shall be recorded in the minutes of the board of directors. If, at such meeting, at least two-thirds of the shares of such corporation are voted in favor of such proposition, the board of directors shall proceed to wind up the business of such corporation, as in this section provided. A copy of such proceedings, to be certified by the president and secretary of such corporation, shall be filed with the bank commissioner. The board of directors shall thereupon give notice to all depositors, creditors and stockholders of the adoption of such resolution, by the publication once a week thereof in a daily or weekly newspaper, for three months thereafter, and by a printed or written notice personally served upon

or mailed to every depositor, creditor or stockholder of such corporation, at the last known residence, postage full paid. Within six months after the filing of such certificate in the office of the bank commissioner, the corporation shall pay all sums due to depositors and creditors, whom they can discover and who claim the moneys due them, and, upon the expiration of six months after the filing of such certificate, it shall be the duty of the corporation to make a statement in duplicate from the books of said corporation, certified by its president and secretary, of the names of all depositors and creditors who have not claimed or have not received the balances to their credit or due them, respectively, and to file the same with the bank commissioner and state treasurer, and to pay to said state treasurer all such unclaimed deposits, moneys and credits for the use and benefit of such depositors and creditors. Whenever all the depositors and creditors have been paid in full, or the amounts due those who can not be found, or who have not claimed the same, have been deposited with the treasurer of this state, for their use and benefit, the board of directors shall divide the capital stock, guaranty and indemnity fund, and any other assets or the proceeds of the securities or real estate in which the same may have been invested, among the shareholders, ratably. The board of directors shall, thereupon, after having divided the remaining property among the shareholders, as hereinbefore provided, file in the office of the bank commissioner a certificate surrendering the corporate franchise. (R. S. 1909, § 1173.)

ARTICLE VI.

MORTGAGE LOANS COMPANIES.

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Sec. 11898. Who may incorporate.—Any five or more persons, who shall have associated themselves by articles of agreement, in writing, as provided by law, for the purposes included under section 11901 of this article, may be incorporated under any name or title designating such business. The articles of agreement shall set out:

First: The corporate name of the proposed corporation, which shall not be the name of any other corporation heretofore incorporated in this state for similar purposes, or an imitation of such name.

Second: The name of the city or town and county in which the corporation is to be located.

Third: The amount of the capital stock of the corporation authorized by the articles of agreement, the number of shares into which it is divided, the amount of capital stock actually subscribed in good faith at the time of the filing of such articles, which amount of capital stock actually subscribed shall be at least one-fourth of the capital stock authorized by the articles; and said articles shall further state that one-half of the capital stock so subscribed has been actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors.

Fourth: The names and places of residence of the several stockholders, and the number of shares subscribed by each.

Fifth: The number of the board of directors and the names of those agreed upon for the first year.

Sixth: The number of years the corporation is to continue, which in no case shall exceed fifty years.

Seventh: The purposes for which the corporation is formed. (Laws 1911, p. 93.)

Sec. 11899. Articles of agreement to be signed by all parties—to be recorded and filed, where.—The articles of agreement shall be signed and acknowledged by all the parties thereto, and recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located; and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner. (Laws 1911, p. 94.)

Sec. 11900. Commissioner to issue certificate, when.—Upon filing of the copy of its articles of agreement with the bank commissioner, and satisfactory proof being made to said bank commissioner that the requirements of sections 11898 and 11911 have been fully complied with, that the incorporation and other fees required by law have been fully paid and that the amount of paid-up capital stock, as set out in the articles of agreement, has been paid in cash, the bank commissioner shall thereupon is-

sue his certificate, under his hand and seal of office, stating that such corporation has been duly organized, and the amount of its authorized and subscribed capital stock; and such certificate, or a certified copy thereof, shall be taken by all courts of this state as evidence of the corporate existence of such corporation. The persons so acknowledging such articles of agreement, and their associates and successors, shall, for the period named in said articles, not to exceed fifty years next succeeding the issuing of such certificate by the bank commissioner, be a body corporate; and by such name they and their successors shall be entitled to have, possess and enjoy all the rights and privileges conferred by law upon corporations, subject to the provisions of this article. (Laws 1911, p. 94.)

Sec. 11901. Corporations may be created for following purposes.—Corporations may be created under this article for the following purposes:

First: To loan money upon, and to purchase notes secured by mortgages or deed of trust on, improved real estate situated in the state of Missouri. The term "improved real estate," as herein used, shall be construed as meaning real estate upon which there are tenantable buildings, or farm lands in a state of cultivation and improved with buildings suitable for farm use. Loans may be made on unimproved real estate, when the proceeds of the loan are so used, in whole or in part, in the improvement of such real estate, that it shall become "improved real estate," as hereinabove defined; the proceeds of each such loan shall be so disbursed under the supervision of the corporation making such loan. The real estate loans which corporations organized under this article are authorized to make and purchase shall come within and be subject to the following further conditions and limitations:

(A) Every such loan shall be secured by a first mortgage or deed of trust, except when the corporation holds all prior liens upon the real estate securing the same.

(B) The amount loaned to any one person, or upon any one parcel of such real estate, shall not exceed an amount equal to three per centum of the paid up capital stock of the corporation making such loan, and shall in no event exceed the sum of fifteen thousand dollars.

(C) The principal of any such loan shall not exceed an amount equal to sixty per centum of the fair and reasonable value of the real estate securing the same: *Provided*, that when any such loan is made payable in equal installments of the principal, or combined principal and interest, and the period between such installments does not exceed one year, the corporation may loan an amount equal to seventy-five per centum of

such fair and reasonable value; *but provided further*, that such loan shall not exceed the amount, and percentage of the paid up capital stock, hereinabove limited.

Second: To loan money upon the pledge or hypothecation, as collateral security for such loans, of the following described evidences of debt or any of them:

(A) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged for the payment of the principal and interest.

(B) Bonds of this state, bearing interest.

(C) Bonds of any state in the union that has not, within five years previous to making such loan, defaulted in the payment of any part of either principal or interest thereof.

(D) Bonds of any city, county, town, township, drainage district or school district of this state that has not defaulted in the payment of any part of either principal or interest thereof, within five years previous to making such loan; and provided such bonded debt does not exceed five per centum of the assessed value of the taxable property therein.

(E) First mortgage bonds of any steam or electric railway, electric light, gas, or telephone company, the income of which is sufficient to pay all operating expenses and fixed charges, and which is completed and operated, wholly or in part, in the state of Missouri, and which has paid the interest as it became due on its bonds for three years next preceding such loan.

(F) Bonds or notes secured by first mortgage or deed of trust on unincumbered real estate situated in the state of Missouri, worth at least twice the amount loaned by the corporation thereon; *but provided*, that, if such loan is on unimproved and unproductive real estate, the amount loaned thereon shall not exceed forty per centum of its actual value.

Third: To purchase, hold, sell and convey real estate, as follows:

(A) A parcel or lot whereon is erected or may be erected a building or buildings requisite for the convenient transaction of its business, and from portions of which, not required for its own use, a revenue may be derived, the cost not to exceed the sum of one hundred thousand dollars, except that in cities of over three hundred thousand inhabitants, such cost shall not exceed two hundred and fifty thousand dollars.

(B) Such real estate as may be purchased or taken by the corporation at foreclosure sales under mortgages or deeds of trust owned or held by such corporation, or in the enforcement of judgments or decrees rendered in its favor for debts due to it, or in settlements made to secure such debts; and all such real estate so purchased or taken, pursuant to this clause, shall be

sold by such corporation within five years after title thereto shall be vested in it, unless the bank commissioner shall extend the time within which such sales shall be made.

Fourth: To execute and issue notes and debentures payable at a future date, and to pledge as security therefor its mortgages and deeds of trust on real estate, and other securities, which notes and debentures may be issued to an amount not exceeding, in the aggregate, ten times the amount of the paid up capital stock of the corporation issuing the same, and in no case exceeding ninety per centum of the amount of the notes or bonds secured by first mortgages or deeds of trust pledged to secure their payment. The issuing of the notes and debentures hereby authorized shall be subject to the conditions and provisions of the following sections of this article. (Laws 1911, p. 94.)

Sec. 11902. Corporations issuing bonds to make certain deposits, when.—Any corporation organized under the provisions of this article, when and as it may desire to issue notes or debentures, shall first transfer to and deposit with the bank commissioner of this state notes or bonds secured by first mortgage or deed of trust on unincumbered improved real estate in the state of Missouri, of the kind and character described in section 11901 of this article, each bearing interest at a rate not less than the rate of interest of the notes or debentures so to be issued, in such amount that the aggregate amount of the notes or debentures so to be issued shall not exceed ninety per centum of the aggregate principal amount of the loans evidenced by the notes or bonds so transferred and deposited. The mortgage or deed of trust, securing each such loan which may be made payable in equal installments of the principal, or combined principal and interest, and evidenced by two or more notes or bonds, shall contain a provision that, in the distribution of the proceeds by foreclosure or otherwise, the same shall be applied as far as may be necessary to the payment in full of the unpaid principal and interest of the notes or bonds secured thereby and on deposit with the bank commissioner, before any part of said proceeds shall be applied to the payment of any other note, bond or advancement secured by said mortgage or deed of trust. Every such corporation, with each deposit, as hereinabove provided, shall furnish to the bank commissioner a satisfactory appraisement of each parcel of real estate conveyed by mortgage or deed of trust as security for the notes or bonds so deposited, which appraisement shall contain such detailed information as the bank commissioner may prescribe; and shall also furnish a satisfactory certificate or abstract of title showing that the mortgage or deed of trust is a valid and existing first lien upon the real estate conveyed thereby. (Laws 1911, p. 96.)

Sec. 11903. Commissioner to certify notes.—It shall be the duty of the bank commissioner to certify, from time to time, such notes or debentures as may be presented to him for certification by each corporation organized under this article, when all the requirements of this article have been fully complied with by such corporation, and when such corporation is, in his opinion, in a sound and solvent condition. The bank commissioner shall affix his signature, in person or by his deputy, attested by his seal of office, to a certificate, to be endorsed on each such note or debenture so presented for certification, in the following words: "This note [or debenture, as the case may be] is secured by pledge of mortgages or deeds of trust deposited with the banking department of the state of Missouri, in such principal amount that the aggregate amount of the principal of the notes and debentures of said corporation so certified by me and now outstanding, of which this is one, does not exceed ninety per centum thereof." (Laws 1911, p. 97.)

Sec. 11904. Securities to be deposited with commissioner in trust.—The securities so deposited under the provisions of this article shall be legally transferred to the bank commissioner, and shall be held by said bank commissioner in trust for the purposes of this article, and shall be primarily liable for such notes or debentures issued upon the security thereof by the corporation depositing the same, without reference to or priority on account of their respective dates or maturities, as shall bear the certificate of the bank commissioner or his deputy, and shall not be liable for any other debt or obligation of the corporation until said notes or debentures, as aforesaid, have been paid or discharged, and the bank commissioner shall not be subject to garnishment, attachment or any other process or order in respect to such securities other than by this article provided. So long as any corporation so depositing shall continue solvent, the bank commissioner shall permit such corporation to collect and receive the interest on its securities so deposited and transferred, and from time to time to withdraw any such securities on depositing other securities in the place of those to be withdrawn, such new securities to be of the same value and of the kind required by law in the first instance; or in lieu of such substitution, notes or debentures of the corporation certified by the bank commissioner, as hereinbefore provided, equal in amount to ninety per centum of the notes or bonds so withdrawn may be surrendered for cancellation by said bank commissioner. If at any time the bank commissioner shall become satisfied that any loan so on deposit with him is excessive, or in case any interest or principal note, bond or coupon so on deposit with him shall not be paid at maturity, and shall remain unpaid for ninety days thereafter, it shall be his duty to require the corporation which deposit-

ed such security to withdraw the same, or such part thereof as he may deem unacceptable, and deposit in its place acceptable securities of equal amount therewith, and it shall not be lawful for the bank commissioner to execute such certificate on any such additional note or debenture of such corporation until it shall have made such withdrawal and substitution. If any such corporation shall fail or neglect to make such withdrawal and substitution within ninety days after being notified by the bank commissioner so to do, it shall be deemed to be insolvent, and shall be proceeded against in the manner provided by law in the case of insolvent banks and trust companies. (Laws 1911, p. 97.)

Sec. 11905. Commissioner to keep record of securities—securities to be kept in strong box or vault—penalty for failure to perform duty.—The bank commissioner shall keep a careful record of the securities deposited by each corporation with him, and shall receive the deposits and securities required by this article to be transferred to and deposited with him, and shall give vouchers for the same to each corporation so depositing. It shall be the duty of the bank commissioner, upon receipt of securities from any such corporation, forthwith to deposit the same in the presence of the president, vice-president or authorized agent of such corporation, in a strong iron box, which shall require two distinct and different keys to unlock the same, one key to be kept by the bank commissioner, and the other by the corporation; and the box shall not be opened except in the presence of the bank commissioner or his deputy, and said president, vice-president, or authorized agent of the corporation: *Provided, however,* that in case of the corporation having such securities on deposit shall be adjudged insolvent, or be dissolved, the court shall make and enforce the necessary orders to place said securities, or any part of them, at the sole disposal of the bank commissioner. Said box shall be kept in the vault of a safe deposit company, trust company or bank, in the city where such corporation shall be located, to be selected by the bank commissioner, and each corporation making such deposit shall pay the fees for the safe keeping of its box. If said bank commissioner or his deputy shall wilfully fail, refuse or neglect faithfully to keep, deposit, account for or surrender, in the manner by law authorized or required, any such securities, as aforesaid transferred to and received by him or into his custody, under the provisions of law, such bank commissioner shall be responsible therefor upon his official bond; and suit may be brought upon said bond by any person injured thereby; and said bank commissioner or his deputy so offending shall, upon conviction thereof, be adjudged guilty of a felony, and punished by a fine not exceeding ten thousand dollars, and by imprisonment in the state penitentiary for not less than two or more than ten years; and for any

other willful violation of, or failure or neglect to perform any duty pertaining to his office and prescribed by the provisions of this article, by said bank commissioner or his deputy, upon conviction thereof he shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not more than twelve months, or by both such fine and imprisonment. (Laws 1911, p. 98.)

Sec. 11906. Amount of capital stock—board of directors.—

The amount of capital stock actually subscribed of any corporation organized under this article shall not be less than one hundred thousand dollars, and the amount of capital stock authorized by such articles shall not be more than ten million dollars. The property and business of each such corporation shall be controlled and managed by a board of directors, not less than five nor more than twenty-five in number, who shall respectively be stockholders of such corporation, and a majority of whom shall be *bona fide* citizens of this state. If the number of such directors shall not exceed five, they shall be elected by ballot by the stockholders of such corporation for one year each, at such time and place as shall be directed by the by-laws of such corporation, of which time and place at least two weeks' notice shall be published in some newspaper published at least once a week in the city or county in which the corporation shall be located, and if there be no newspaper published in such city or county then in any newspaper published in this state which shall circulate in the locality where such corporation shall be located. Such election shall be made by such stockholders as shall attend in person or by proxy. In case the election shall not be held on the day named in such notice, the said corporation shall not thereby be dissolved, but an election may be held at any other time in conformity to the by-laws of such corporation; and the directors so elected shall hold office as such until their respective successors shall be duly elected and qualified. If the number of directors of such corporation shall exceed five, they shall, as soon as may be, divide themselves by lot into three classes of equal number, as near as may be, designated as the first, second and third classes, of which the directors of the first class shall hold office as such for one year each, those of the second class for two years each, and those of the third class for three years each; and at each annual election, conducted as hereinbefore provided, directors shall be elected for the term of three years each to fill the vacancies created by the then retiring class. In case of the death or resignation of any director, the surviving directors shall fill the vacancy thereby created until the next annual election. (Laws 1911, p. 99.)

Sec. 11907. Board of directors to meet, when—applications for loans, how made—record to be kept—directors not to use

funds.—The board of directors of each such corporation shall meet at least once each month and pass upon the business of the corporation transacted since their last previous meeting. All sums paid for services, fees, or otherwise, to any director shall be reported in detail at each regular meeting of said board. All applications for loans shall be made in writing through the treasurer of the corporation, who shall keep a record thereof, showing the date, name of applicant, amount asked for and the security offered; the board of directors shall keep a record of their approval or disapproval of each loan applied for; and no bills payable shall be made by the corporation except with the consent of the board of directors. No director or officer of any such corporation shall be permitted to borrow or use any money or securities of the corporation of which he is such director or officer. (Laws 1911, p. 99.)

Sec. 11908. Board to invest funds—dividends may be declared, when.—The board of directors of each such corporation shall have power to invest the moneys and funds of the corporation in the manner prescribed by section 11901 of this article, and to dispose of the notes and debentures issued, and the loans and securities held by the corporation. Dividends of the profits of each such corporation may be declared and paid by its board of directors, from time to time, subject to the provisions and limitations of section 11909 of this article; but no such dividend shall be so declared or paid while such corporation is in an insolvent condition, nor shall any such dividend be declared the payment of which would render such corporation insolvent; and if any directors shall authorize or consent to the declaration or payment of any such dividend, knowing the corporation to be insolvent or that the payment of such dividend would render it insolvent, they shall be jointly and severally liable for all debts of the corporation then existing, and for all that shall thereafter be contracted while they shall respectively continue in office: *Provided*, that, if any such director, having notice of but not authorizing or consenting to the declaration or payment of any such dividend, shall object thereto and shall, at any time before the time fixed for such payment, file a written certificate of his objection with the secretary of the corporation and a certified copy thereof with the bank commissioner, he shall be exempt from such liability. (Laws 1911, p. 100.)

Sec. 11909. Board to set aside surplus fund, when.—Whenever any such corporation shall not have a surplus fund amounting to a sum equal to twenty per centum of its paid up capital stock, before declaring any dividend, its board of directors shall first set aside as a surplus fund an amount not less than ten per centum of its earnings since the declaration of its last dividend, until such accumulated surplus fund shall amount to twenty per

centum of the paid up capital stock of such corporation; and no such dividend shall be declared or paid, when by such payment such accumulated surplus funds would be reduced to less than twenty per centum of the paid up capital stock. (Laws 1911, p. 100.)

Sec. 11910. Board to keep account of transactions—to file statement with commissioner—shall publish statement—penalty for violation.—The board of directors of each such corporation shall keep correct accounts of their transactions, and shall exhibit a full statement of the condition of the affairs of such corporation at each annual meeting of the stockholders, which statement shall be prepared and open for the inspection of the stockholders, at least ten days before such annual meeting. The board of directors, whenever thereto required by the bank commissioner, and within fifteen days after the date of his call therefor, shall also make and file in the office of the bank commissioner a statement, which shall contain such particulars as the bank commissioner may prescribe, of the actual condition of such corporation at the close of business on day prior to such call by him designated; such statement to be attested by three of said directors, and verified as to the truth of the facts therein stated by the affidavit of the president and secretary of the corporation. Each such statement, together with said attestation and affidavit, shall be published by such corporation at least once in some daily or weekly newspaper published in the city or county where the corporation is located. Should the president, secretary or any director of such corporation refuse to make such statement, attestation or affidavit, when so required by the bank commissioner, or refuse to make or file the same within the time required by this section, or willfully and corruptly make a false statement, attestation or affidavit, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not less than one or more than twelve months, or by both such fine and imprisonment. It shall be the duty of the bank commissioner, within sixty days from the date of every such call, to report to the prosecuting attorney of the county or circuit attorney of the city in which such corporation may be located, the name of every such corporation that shall have failed to file in the office of the bank commissioner within the prescribed time the statement by this section required; and it shall be the duty of each prosecuting or circuit attorney to whom such report may be made immediately to institute proceedings for the enforcement of the penalties by this section provided, and as compensation for his services in that behalf he shall receive one-fourth of the amount of the penalty or penalties collected. (Laws 1911, p. 100.)

Sec. 11911. Amount appropriated for expenses, statement of same to be filed with commissioner—penalty for failure.—The amount that may be appropriated or expended by any such corporation, for expenses connected with its organization and in the disposition of its capital stock, shall not, for such combined purposes, exceed one per centum of the amount from time to time paid in upon the capital stock of such corporation, and no such expense shall be paid with money paid in upon said capital stock. The president or treasurer of each such corporation, or in case the certificate of incorporation shall not have been issued, then any three of the persons named in the articles of agreement as members of the board of directors, shall, when and as thereto required by the bank commissioner, furnish to and file with said bank commissioner a true and correct statement, under his or their oath stating in detail the amount of money expended and liabilities incurred from time to time, in connection with the above named purposes, and that no part thereof has been paid with money paid in upon said capital stock. In case any such officer, director or person named as director, as the case may be, shall refuse to furnish such sworn statement when and as so required by said bank commissioner, or shall authorize or consent to the expenditure of an amount for the combined purposes aforesaid in excess of one per centum of the amount from time to time paid in upon the capital stock, or shall willfully and corruptly make a false statement thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not less than one or more than twelve months, or by both such fine and imprisonment. It shall be the duty of the bank commissioner, after the issuance of the certificate of incorporation, and within sixty days from the date of his demand for any such statement, to report to the prosecuting attorney of the county or circuit attorney of the city in which each such corporation may be located, the name of each such corporation that shall have failed to file in the office of the bank commissioner within the prescribed time the statement by this section required; and it shall be the duty of each such prosecuting or circuit attorney to whom such report may be made immediately to institute proceedings for the enforcement of the penalties by this section provided, and as compensation for his services in that behalf he shall receive one-fourth of the amount of the penalty or penalties collected. The directors of each such corporation, who shall authorize or consent to the expenditure of an amount for the combined purposes aforesaid in excess of one per centum of the amount from time to time paid in upon its capital stock, shall be jointly and severally liable to such corporation for the amount of such excess, and the same may be recovered by civil suit in any

court of competent jurisdiction: *Provided*, that if any such director, having notice of but not authorizing or consenting to such excess payment shall object thereto and shall, within three days after such notice, file a written certificate of his objection with the secretary of the corporation and a certified copy thereof with the bank commissioner, he shall be exempt from such liability. (Laws 1911, p. 101.)

Sec. 11912. Books—papers—records—open for inspection, when.—All books, papers and records of the proceedings of each such corporation shall be kept open during reasonable office hours for the inspection of all stockholders of the corporation. (Laws 1911, p. 102.)

Sec. 11913. Who are liable.—No person holding stock in such corporation as executor, administrator, guardian or trustee, and no person holding such stock pledged as collateral security, shall be subject to any personal liability as stockholder in such corporation. The estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and competent to act and hold the stock in his own name; and the person pledging such stock shall be considered as the holder thereof, and shall be liable as stockholder accordingly. Every such executor, administrator, guardian or trustee shall represent the shares of stock so held by him at all meetings of the corporation, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid may, nevertheless, represent the same at all such meetings and may vote accordingly as a stockholder. (Laws 1911, p. 102.)

Sec. 11914. Corporation may increase or decrease capital stock—how.—Every such corporation may increase or decrease its capital stock by complying with the provisions of this article, to any amount within the limits prescribed by section 11906 hereof: *Provided*, that no such decrease of capital stock shall be permitted that would reduce the same to less than ten per centum of the then outstanding notes and debentures of the corporation. (Laws 1911, p. 103.)

Sec. 11915. Directors to call meeting—when—notice, how given.—Whenever the holders of ten per centum of the capital stock then issued and outstanding of any such corporation shall desire that the amount of its capital stock be increased or decreased, it shall be the duty of the board of directors, upon the written request of such stockholders, to call a meeting of the stockholders for such purpose, by publishing a notice signed by a majority of said directors, once a week for at least sixty days next

before such meeting shall be held, in a newspaper published in the county, if any shall be published therein, and by depositing a written or printed copy thereof in the postoffice, postage prepaid and addressed to each stockholder at his last known place of residence, at least sixty days before such meeting shall be held, therein specifying the object of the meeting, the time and place when and where the same shall be held, and the amount to which the capital stock is proposed to be increased or decreased. (Laws 1911, p. 103.)

Sec. 11916. Stockholders' meeting—amount of stock necessary to increase or decrease capital—vote, how taken—statement to be filed, where—to contain what.—The stockholders who shall appear in person or by proxy at the meeting provided for in the next preceding section, in number representing not less than a majority of all the shares of the capital stock then issued and outstanding, shall organize by choosing one of their number chairman of the meeting and a suitable person for secretary, and shall proceed to a vote of those present in person or by proxy; and if, on canvassing the same, it shall appear that the affirmative votes of the holders of a majority of all the shares of the capital stock then issued and outstanding have been cast in favor of increasing or decreasing the amount of the capital stock, as the case may be, a statement of the proceedings, showing a compliance with the provisions of this article, the amount of capital actually paid in, the whole amount of the assets and liabilities of the corporation, and the amount to which the capital stock shall be increased or decreased, shall be made out, signed and verified by the affidavit of the chairman and attested by the secretary. Such statement shall be acknowledged by the chairman and recorded as provided in section three of this article, and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner who shall thereupon issue his certificate, under his hand and seal of office, stating that such corporation has complied with the requirements of the law for increasing or decreasing its capital stock, as the case may be, and the amount to which such capital stock has been increased or decreased; and such certificate, or a certified copy thereof, shall be taken by all the courts of this state as evidence of such increase or decrease of stock; and thereupon the capital stock of such corporation shall be increased or decreased, as the case may be, to the amount specified in such certificate, and such corporation shall thereafter continue entitled to the privileges and provisions and subject to the liabilities of this article. (Laws 1911, p. 103.)

Sec. 11917. Assessment.—The shares of stock and property of every such corporation shall be assessed and taxed in the

same manner as now provided, by section 12775 of the Revised Statutes of Missouri, 1919, for assessing and taxing institutions or associations doing a banking business. (Laws 1911, p. 104.)

Sec. 11918. Powers and duties of bank commissioner.—The bank commissioner shall have and exercise the same supervision, authority and power over, and shall be charged with the same duties toward, all corporations organized under this article, as he now has and exercises and is charged with by law with reference to banks and trust companies, as far as the same may be applicable, and except as may be otherwise provided by this article; and all provisions of the laws of this state relating to fees to be paid to the bank commissioner by banks and trust companies, so far as the same may be applicable and not inconsistent with the provisions of this article, shall apply to corporations organized under this article: *Provided*, that the bank commissioner shall be allowed and paid, in addition to the fees hereinabove referred to, the sum of fifty cents for each one thousand dollars in par value, or fractional part thereof, of the notes and debentures certified by him under the provisions of section 11903 of this article. The fees collected under this section shall be paid directly into the state treasury by the bank commissioner and credited to the state banking department fund. (Laws 1911, p. 104.)

Citations of General Authorities Touching Banking Business.

A banking corporation cannot, by its articles of incorporation, limit the number of shares which one person may own. 13 A. 197.

When no restrictions appear in the charter, a bank can buy outright promissory notes, but not at a greater rate of discount than the rate of interest that it might lawfully charge for the loan of money. 116 Mo. 51. Money deposited in a bank may be paid out on the oral order of a depositor, but when the bank acts on such order it does so in obedience to the order as the agent of the depositor and not as an agent of the payee of the order. 145 Mo. 142. To save itself from loss, a banking corporation may take an assignment of an account due a debtor of the corporation. 7 A. 570.

Banks can handle negotiable bonds, can sell or place them for their customers, and sureties on cashier's bond will be liable for his misappropriation of profits on such transactions. When cashier acts officially for the bank, he is estopped from denying his agency, and the profits of his transactions belong to the bank; if the action of the bank is *ultra vires*, it can only be taken advantage of by the state. 52 A. 244. If a cashier signs the name of his bank as surety to a bond in judicial proceedings by himself as cashier, while the bond does not bind the bank because *ultra vires*, it binds the cashier personally. 19 A. 542. See, also, 73 A. 135. When a bank obtains stock of another bank by purchase and not as collateral, its act is *ultra vires*, but such illegal purchase will be no defense to a suit to enforce its liability as a stockholder. 74 A. 365.

Relation of depositor with bank.—When a depositor's book has been balanced, and together with the cancelled checks returned to him, he must, in a reasonable time, notify bank of any errors in balancing such book, and also of forged checks, if the bank has paid any such. 74 A. 281. The ordinary relation between bank and depositor is that of debtor and creditor. 2 A. 563; 5 A. 342. Depositor's fund may be applied on his debt to the bank. 62 A. 179. A bank has no right to refuse payment of a depositor's check on the ground that it holds the depositor's acceptance, not yet due, which may be dishonored when due. 11 A. 292. Bank may confer authority on its officers by its customs and usages. 18 A. 665; 70 A. 675.

When money is deposited in name of one as trustee, bank cannot pay it out on his individual check. 26 A. 129. Bank receiving endorsed check from its customer, and giving credit for amount, becomes purchaser, and title to check vests in it. 59 A. 540. Liability of drawer for payment of checks upon forged endorsements. 71 A. 132.

Bank is liable for failure to present at proper time a check received for collection. 36 Mo. 475. It is also liable for negligence of its agent resulting in failure to collect checks. 38 Mo. 60; 59 A. 540; 118 A. 356. When bank receives check from depositor and gives credit therefor, it becomes the owner of such check. 79 Mo. 421; 80 Mo. 444. See, also, 120 A. 527. A bank, in undertaking to collect a draft in the absence of special contract, has no right to receive anything but cash in payment therefore. 109 A. 665.

One purchasing stock in a bank may rely upon the assurance of its officers as to the financial condition, and not subject himself to the imputation of negligence for failure to examine its books. 76 Mo. 439. Negligence of directors, whereby they failed to discover defalcation of bookkeeper, is no defense in a suit on a bond of such bookkeeper.

The directors of a bank in failing circumstances may make an assignment for benefit of creditors when there is nothing in the charter or general laws forbidding it. 86 Mo. 260. Unless a special meeting is called in the manner prescribed in the by-laws and notices given, the meeting possesses no validity. 119 Mo. 9.

Liability of directors.—When, by reason of negligence of directors, losses occur, they are liable to the bank, while a going concern, to the assignee after assignment, or in equity, to the stockholders in the event assignee declines to bring suit. It is gross negligence for directors to confer upon cashier the entire management of bank. 148 Mo. 380. The directors are not liable if they exercise ordinary business care in managing affairs of their bank. 188 Mo. 639.

Bank's relation to depositors.—The ordinary relation between a bank and its current depositors is that of debtor and creditor. The deposit is a loan, and the payment by the bank on account of customer is a repayment of the loan. Where a bank holds the note of a depositor who dies insolvent, it may deduct from the deposits the whole amount of such note. 2 A. 563.

Notice to a director as to where the proceeds of note discounted were to go was notice to the bank. 2 A. 367. Knowledge of the president is knowledge of the bank, and his absence is no excuse for bank's failure to act upon such knowledge. 6 A. 543.

An officer of incorporated bank, receiving deposits when the bank is insolvent, is individually liable for such deposits. 89 Mo. 51. Likewise a private banker. See Sec. 4585.

An action will lie against a director for damages for loss sustained by reason of his fraudulent dealing with the bank. 6 A. 338.

Assignment of note by president of bank without authority of directors is a voidable act which may be ratified. 73 A. 271. A deed signed by vice-president of a bank is *prima facie* valid, but want of authority to sign same may be shown to impeach such deed. 145 Mo. 418. Official salaries must be fixed by by-law or resolution made a matter of record. 36 A. 333.

The existence of more directors than the charter allows does not invalidate their acts, the stockholders alone having the right to complain. 39 A. 453.

The directors are liable to bank or its receiver for loss accruing from loan to one person of more than one-fourth of its capital stock. 107 Mo. 577; 107 Mo. 594. Where a loan is made in excess of 25 per cent of its capital stock, the loan is valid and enforceable at least to the limit of 25 per cent. 120 Mo. 127. The directors are bound to know all that is done by the bank beyond the merest routine, and when, by the exercise of ordinary business care, they could have known that more than one-fourth of capital stock was loaned to one insolvent person or company, they became liable for losses growing out of such illegal loan, in an action at law by the bank while it is a going concern, or by the assignee after assignment, or, in action in equity, by the stockholders, in the event of the refusal of the assignee to bring suit. 148 Mo. 380; 183 Mo. 552.

Liability of sureties on bonds.—Recitals in bond that cashier has been appointed by board is conclusive on sureties. An increase of capital stock will not discharge sureties. 88 Mo. 160; s. c. 13 A. 313. Unless bond itself limits liabilities of sureties for a fixed period, and cashier continues in office without reappointment or re-election, sureties will be liable so long as he holds the position. 72 Mo. 597. Where teller is made cashier, and continues to act as teller, this does not release sureties on bond as cashier. 9 A. 578.

Cashier's powers.—He cannot bind bank by permitting the application by an employe to his own use of the funds of the bank. 86 Mo. 260. Cashier has no power to discharge surety on note. 63 Mo. 24. Cashier cannot certify checks or issue certificates of deposits to himself. 84 Mo. 304. He cannot deal in real estate for bank. 18 A. 665.

If cashier acts for himself and in his own interest adversely to that of bank, the latter is not bound by his uncommunicated knowledge. 78 A. 463. But if he acts for bank within scope of his authority, his knowledge is imputed to bank. 89 A. 511. It is not negligence for cashier to leave door of vault open while leaving the bank for a few minutes, the assistant cashier who opened such vault being present. 204 Mo. 455. Cashier of private bank may sell and assign its sureties. 132 A. 354.

A bank officer receiving deposits when he knows bank is insolvent is liable to depositor at suit of such depositor. 89 Mo. 51. When depositors assign their claims against officers to assignee, they part with their legal title to such claims, and cannot control suit thereon. 169 Mo. 400.

CHAPTER 7.

(R. S. 1919.)

BILLS AND NOTES.

Article I—Negotiable instruments in general.

II—Bills of exchange.

III—Promissory notes and checks.

IV—Terms defined.

V—General provisions.

ARTICLE I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

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Sec. 787. Title of chapter.—This chapter will be known as the negotiable instrument law. (R. S. 1909, § 9971.)

Historical.—Prior to 1905 Laws (1905, p. 243) the statutory law on this subject was composed of Secs. 443 to 463, inclusive. R. S. 1899.

The act of 1905 was entitled "An act relating to negotiable instruments, to revise and codify the law concerning same, and to establish a law uniform with that of other states on the same subject." This act did not expressly repeal the old law, but contained at its end the following section:

Inconsistent acts repealed.—All acts and parts of acts not consistent herewith are hereby repealed. (Laws 1905, p. 265.)

Under this section the following sections of 1899 revision were omitted from the revision in 1909: Sections 443, 444, 445, 446, 447, 448, 457, 460. In addition to these, section 459, Rev. Stat. 1899, which was Sec. 10175, Rev. Stat. 1909, was held to be repealed by implication in the case of *Bank v. Ettenson's Estate*, 172 A. 404, 158 S. W. 448, and is therefore omitted from this revision. Sections 461, 462, R. S. 1899, were repealed in 1909 (Laws 1909, p. 127). Sec. 463, Rev. Stat. 1899, which was Sec. 10176, Rev. Stat. 1909, is omitted as duplication.

The negotiable instrument act proper of 1905 covers sections 9971 to 10165, inclusive, of the Rev. Stat. of 1909, which are sections 787 to 985, Revision of 1919. Sections 10166 to 10174 of Rev. Stat. 1909, which are sections 986 to 994, 1919, are carried over from former statutory law.

There have been no amendments of any kind adopted in the ten-year period from 1909 to 1919 except four measures passed by the legislature of 1919. See Laws 1919, p. 605, and now known as sections 976, 977, 978 and 979.

Sec. 788. Requirements of negotiable instruments.—An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand, or at a fixed or determinable future time; (4) must be payable to order or to bearer; and, (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. (R. S. 1909, § 9972.)

Requisites in general.—Where a corporate bond of an issue secured by a mortgage recites that reference is made to the mortgage for the rights of the holders, and the mortgage stipulated certain conditions before suit, *held* such bond does not meet the requirements of this section. *St. Louis Coal Co. v. Mining Co.*, 194 A. 598, 186 S. W. 1152.

Under this section, and section 10155, a bank check is a negotiable instrument. An inland bill of exchange. *Fisher v. Bagnell*, 194 A. 581, 186 S. W. 1097; *Nelson v. Diffenderffer*, 178 A. 48, 163 S. W. 271.

The term "to execute," as applied to notes, includes signing and delivering. *Morris v. Butler*, 138 A. 378, 122 S. W. 377. See, also, *Sublette v. Brewington*, 139 A. 410, 122 S. W. 1150.

The term "negotiable," in its enlarged signification, applies to any written security which may be transferred by endorsement or delivery, so as to vest in the endorsee the legal title, with the right to maintain suit thereon in his own name. *Odell & Frink v. Gray*, 15 Mo. 337.

Sec. 789. Sum payable.—The sum payable is a sum certain within the meaning of this chapter, although it is to be paid: (1) With interest; or (2) by stated installments; or (3) by stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or (4) with exchange, whether at a fixed rate or at the current rate; or (5) with costs of collection or an attorney's fee, in case payment shall not be made at maturity. (R. S. 1909, § 9973.)

"Certainty as to amount of attorney fees."—A contract for an attorney's fee for collection on a note is valid and may be enforced. Prior to the present negotiable instrument law such a provision rendered a note not negotiable. *Bank v. Lee*, 182 A. 185, 168 S. W. 796. See, also, *Davis McColl*, 179 A. 198, 166 S. W. 1113, in which case there were both provisions for attorney fees and also for an extension of time for payment without notice. Both provisions failed to affect negotiability of note.

Provisions for the payment of exchange did not render amount uncertain. *Bank v. Goode*, 44 A. 129. Nor provisions for payment of interest. *Id.* *Hope v. Barker*, 112 Mo. 338, 20 S. W. 567.

Sec. 790. Conditional and unconditional promises to pay.—An unqualified order or promise to pay is unconditional within the meaning of this chapter though coupled with: (1) An indication of a particular fund out of which reimbursements are to be made, or a particular account to be debited with the amount; or (2) a statement of the transaction which gives rise to the instrument. But an order or a promise to pay out of a particular fund is not unconditional. (R. S. 1909, § 9974.)

Notation on back of check "to be used as part renewal to the note" did not destroy its negotiability, but was the statement of the transaction which gave rise to the instrument under this section. *Howard v. Bank*, 198 A. 284, 200 S. W. 91. See, also, *Crowe v. Harmon*, 25 Mo. 417; *Mense v. Osborn*, 5 Mo. 544.

Sec. 791. Instrument, when payable—when not negotiable.—An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable: (1) At a fixed period after date or sight; or (2) on or before a fixed or determinable future time specified therein; or (3) on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. (R. S. 1909, § 9975.)

Particular fund.—An instrument for the payment of money from a particular fund held not negotiable. *McGee v. Larramore*, 50 Mo. 425. Certainty as to time of payment not affected by use of terms on the above. *Bank of Skeen*, 101 Mo. 683, 14 S. W. 732.

Sec. 792. Instrument containing promise to do any act in addition to payment not negotiable.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which: (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or (2) authorizes a confession of judgment if the instrument be not paid at maturity; or (3) waives the benefit of any law intended for the advantage or protection of the obligor; or (4) gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal. (R. S. 1909, § 9976.)

Sec. 793. Validity of instrument not affected, how.—The validity and negotiable character of an instrument are not affected by the fact that: (1) It is not dated; or (2) does not specify the value given, or that any value has been given therefor; or (3) does not specify the place where it is drawn or the place where it is payable; or (4) bears a seal; or (5) designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. (R. S. 1909, § 9977.)

Operation in general.—In an action on a check it is sufficient to state that it was given in payment of an account stated and it is not necessary to allege how the indebtedness originally accrued. *Nelson v. Diffenderfer*, 178 A. 48, 163 S. W. 271. A check is a negotiable instrument and imports a consideration. *Id.* Where an undated note, payable four months after it was delivered to the holder on December 1, 1905, in payment of a note executed by the same parties maturing August 30, 1905, was dated by the agent of the holder December 30th, as the date of said note, without consent of indorsers of said note, *held void as to said indorsers.* *Bank v. Day*, 145 A. 410, 122 S. W. 756. As a necessity of statement in negotiable instrument that same was "for value received," prior to the act of 1905, see *Lowry v. Danforth*, 95 A. 441, 69 S. W. 39.

Sec. 794. Payment on demand, when.—An instrument is payable on demand: (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand. (R. S. 1909, § 9978.)

Payable on demand.—A bill indorsed after due becomes a new bill at sight, or, as expressed in our present statute, a note payable on demand. *Hawkins v. Wiest*, 167 A. 439, 151 S. W. 789. Where defendant, after obtaining judgment upon note against makers, takes possession of it and reissued it though after due, it became a new instrument payable on demand. *Id.*

As to effect, under prior law, of failure to fix time of payment, see *Mason v. Patton*, 1 Mo. 279; *Collins v. Trotter*, 81 Mo. 275; *First Nat. Bank v. Hunt*, 25 A. 170.

Sec. 795. Payable to order, when.—The instrument is payable to order when it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of: (1) A payee who is not maker, drawer or drawee; or (2) the drawee or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or some of the several payees; or (6) the holder of an office for the time being. Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty. (R. S. 1909, § 9979.)

Sec. 796. Payable to bearer, when.—The instrument is payable to bearer: (1) When it is expressed to be so payable; or (2) when it is payable to a person named therein or bearer; or (3) when it is payable to the order of a fictitious or nonexisting person and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank. (R. S. 1909, § 9980.)

This section cited and construed, and held a promissory note, indorsed in blank by the payee, is payable to bearer. *Trust Co. v. Ramge Co.*, 196 A. 206, 190 S. W. 1045.

A promissory payable to the maker and indorsed by him in blank is "negotiable" by sale and delivery of a third person. *Id.* Section cited and applied and held, a note is considered as made payable to bearer when it is made payable to a fictitious or non-existing person, or when the name of the payee does not purport to be the name of any person. *Pen Co. v. Buckner*, 188 A. 259, 175 S. W. 81.

Sec. 797. Terms, when sufficient.—The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. (R. S. 1909, § 9981.)

Sec. 798. Date, when deemed prima facie to be true.—Where the instrument or an acceptance or any endorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or indorsements, as the case may be (R. S. 1909, § 9982.)

Section cited and construed. *Yoemans v. Nachman*, 198 A. 195, 198 S. W. 180. Held the purchaser of a note having attached thereto interest coupons that are not paid and past due and which provide that when interest is not paid when due that the whole note may become due, and which does not compare with description in deed of trust by which it purports to be secured, is chargeable with notice of its infirmities. *Id.*

Sec. 799. Antedating or postdating.—The instrument is not invalid for the reason only that it is antedated or postdated: *Provided*, this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. (R. S. 1909, § 9983.)

Section cited and applied. *Bank v. Day*, 145 A. 410, 122 S. W. 756, held this section seems to contemplate instruments which are ante-dated or post-dated by the parties in accordance with a mutual agreement to that effect.

Sec. 800. Effect of inserting date in instrument undated.—

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course, but as to him the date so inserted is to be regarded as the true date. (R. S. 1909, § 9984.)

See notes to preceding section.

Sec. 801. Prima facie authority to fill blanks.—Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill up as such for any amount. In order that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. (R. S. 1909, § 9985.)

Filling blanks.—While the presumption is in favor of the integrity of a note in the hands of the payee of indorsee, yet where it appears to be in different handwritings, written at different times, and in different ink, such presumption is destroyed and the fact must be found without aid of the presumption. *Bank v. Robinson*, 185 A. 582, 172 S. W. 628. As to authority to fill blanks, see *National Bank of Paris v. Nickell*, 34 A. 295; *Mackey v. Basil*, 50 A. 190; *Schooler v. Tilden*, 71 Mo. 580.

Sec. 802. Incomplete instruments, when invalid.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. (R. S. 1909, § 9986.)

Section cited and applied. *Grocery Co. v. Bank*, 192 A. 476, 182 S. W. 777. Where the plaintiff, president of a corporation, before going on vacation, signed some checks in blank and left them with his manager and, while manager was out, a traveling salesman stole the checks, filled in certain amounts and cashed them and defendant bank paid checks, *held*, maker estopped from claiming he did not voluntarily part with possession of checks. *Id.*

Sec. 803. Instruments incomplete until delivered.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote

party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of the holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. (R. S. 1909, § 9987.)

Delivery.—See note to preceding section.

As to necessity and sufficiency of delivery, see *Williams' Admr. v. Williams*, 67 Mo. 681; *Greene County Bank v. Chapman*, 134 Mo. 427, 35 S. W. 1150; *School District v. Sheidley*, 138 Mo. 672, 40 S. W. 656; *Fogg v. School Dist.*, 75 A. 159; *Wood v. Flannery*, 89 A. 632. As to what constitutes conditional delivery, see *Massman v. Holscher*, 49 Mo. 87; *Ayres v. Milroy*, 53 Mo. 516.

Sec. 804. Rules of construction.—Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount; (2) where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof; (3) where the instrument is not dated, it will be considered to be dated as of the time it was issued; (4) where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail; (5) where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either at his election; (6) where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser; (7) where an instrument containing the words, "I promise to pay," is signed by two or more persons, they are deemed to be jointly and severally liable thereon. (R. S. 1909, § 9988.)

General rules of construction.—Held the spoliation of a promissory note by a stranger does not constitute an alteration so as to make it void so far as holder is concerned, unless he subsequently ratifies the stranger's act, and will not prevent the recovery on the original consideration for which the note was given when the alteration was not made with a fraudulent intent. *Id.* Where an instrument is not dated, it will be considered to be dated as at the time it was issued. *Bank v. Day*, 145 A. 410, 122 S. W. 756.

As to capacity in which parties agree to be bound, see *Mayer v. Robinson*, 93 Mo. 114; *McCune v. Belt*, 45 Mo. 174; *Hardester v. Tate*, 85 A. 624; *Hill v. Combs*, 92 A. 242.

As to joint and several liability, see *McPherson v. Andex*, 75 A. 204; *Armstrong v. Johnson*, 93 A. 492, 67 S. W. 733.

As to amount, see *Murrill v. Handy*, 17 Mo. 406.

As to payment of interest, see *Finley v. Acock*, 9 Mo. 841; *Pittman v. Barret*, 34 Mo. 84; *Koehring v. Muemminghoff*, 61 Mo. 403; *North v. Walker*, 66 Mo. 453; *Borders v. Barber*, 81 Mo. 636; *Macon County v. Rodgers*, 84 Mo. 66.

Sec. 805. One who signs the trade or assumed name, when liable.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. (R. S. 1909, § 9989.)

Use of trade name.—Facts in suit reviewed and *held*, answer, unverified, merely confesses note executed as shown. *Bank v. Lead Co.*, 173 A. 634, 158 S. W. 1066. A suit on a promissory note cannot be maintained against an alleged principal whose name in no way appears on the note, the note not being signed in such a way as to make it ambiguous. *Id.* As to liability upon assuming a trade name, prior to act of 1905, see *Keck v. Brewing Co.*, 22A. 197.

Sec. 806. When agents may sign.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. (R. S. 1909, § 9990.)

Execution by agent.—The authority of an agent to indorse a note for the payee may be proved as agency is proved in other cases and by the writing conveying the authority. *Bank v. Hohn*, 146 A. 699, 125 S. W. 539. An instrument relied upon to prove the authority of an agent to indorse a note for a payee is not competent evidence until proof is made that it was executed by the payee. *Id.*

Sec. 807. Agents, when not liable.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. (R. S. 1909, § 9991.)

Section cited and applied. Where notes, given for a piano purchased by a corporation, were signed by the corporation by its president only, and the signature of another person with no official designation whatever, the latter signer was liable thereon to payee, although she was in fact secretary of the corporation and intended to sign merely as secretary and the payee knew her official capacity at the time of taking the note. *Wurlitzer Co. v. Rossmann*, 196 A. 78, 190 S. W. 636.

Sec. 808. Signature by "procuration."—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. (R. S. 1909, § 9992.)

Sec. 809. Indorsement or assignment by corporation or infant, effect of.—The indorsement or assignment of the instrument

by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation of infant may incur no liability therein. (R. S. 1909, § 9993.)

See Federal Discount Co. v. Backer, 138 A. 54, 119 S. W. 981.

Sec. 810. Forged signatures not binding.—Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (R. S. 1909, § 9994.)

Forged signature.—Section cited and applied. Bank v. Reed, 192 A. 344, 180 S. W. 1002: *Held*, the provisions of this section do not cover any instrument given for an illegal consideration. Forged and unauthorized signatures may be ratified. Cravens v. Gillilan, 63 Mo. 28; First Nat'l Bank v. Gay, 63 Mo. 33. See notes to Sec. 806.

Sec. 811. Prima facie evidence of consideration.—Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. (R. S. 1909, § 9995.)

Consideration in general.—Section cited and applied. Nelson v. Dffen-derffer, 178 A. 48, 163 S. W. 271: *Held*, consideration need not be of any real value to the promisor. It is sufficient if it is any detriment or inconvenience to the promisor or that he changed his relation to or relinquished his supposed right against promisor or a third party in consequence of such promise. In an action for a claim against the estate of a deceased drawer of a check, it was not necessary for the claimant to prove the original consideration, but the check itself will establish the claim in the absence of a showing that there was no consideration. Fisher v. Bagnell, 194 A. 581, 186 S. W. 1097. Section cited and applied. Bank v. Morris, 156 A. 43, 135 S. W. 1008: *Held*, where one takes a note, before its maturity, in good faith, from payee as collateral security, he takes it for value and is the holder in due course.

As to necessity of consideration, see Catterlin v. Lusk, 98 A. 182, 71 S. W. 1107. But not necessary that bill of exchange should recite that it is "for value received." Griffith v. Cotrell, 1 Mo. 480; Taylor v. Newman, 77 Mo. 257. See, also, Sec. 793.

Sec. 812. Value, what constitutes.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such, whether the instrument is payable on demand or at a future time. (R. S. 1909, § 9996.)

Sufficiency of consideration.—See notes under preceding section.

Section cited and applied. Bank v. Sollars, 190 A. 284, 176 S. W. 263. In action on a note given by defendant and another to plaintiff bank in payment certain lands, where plaintiff bank promised to guarantee the title to lands, which failed, defendant was not released from liability on the note, the promise not being made for his benefit. An antecedent debt affords sufficient consideration to make one accepting a negotiable instrument before maturity, as collateral security for such pre-existing debt, a holder for value. Bank v. R. R., 172 A. 662, 154 S. W. 866.

For discussion of sufficiency of consideration in various cases, see *Fitzgerald v. Fleming*, 58 A. 185. Relinquishment of dower. *Caldwell v. Bower*, 17 Mo. 564. Promise to abstain from use of intoxicating liquors. *Lindell v. Rokes*, 60 Mo. 249. Assignment of contract. *Early v. Reed*, 60 Mo. 528; *Lane v. Pollard*, 88 A. 326. Extension of time. *Cox v. Sloan*, 158 Mo. 411 57 S. W. 1052. Payment of claim against third person. *Brainard v. Capelle*, 31 Mo. 428; *Rittenhouse v. Ammerman*, 64 Mo. 197. Debt barred by limitation. *Glover v. Cheatham*, 19 A. 656.

Sec. 813. Holder deemed for value, when.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. (R. S. 1909, § 9997.)

See notes to preceding section.

Sec. 814. Holder with lien deemed a holder for value.—Where the holder has a lien on an instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. (R. S. 1909, § 9998.)

Where payee took a mortgage on real estate as collaterals' security for payment of note, and released such collateral without the assent of the surety the latter was thereby released from his obligation to the payee to the extent of the value of the property released. *Long v. Mason*, 273 Mo. 266, 200 S. W. 1062. The negotiable instrument law abrogates the previous rule that one to whom negotiable paper is transferred merely as collateral for pre-existing debt holds it subject to all equities existing between the original parties. *Bank v. Morris*, 156 A. 43, 135 S. W. 1008.

Sec. 815. Failure of consideration a defense, when.—Absence or failure of consideration is a matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise. (R. S. 1909, § 9999.)

See notes to sections 811 and 813.

Failure of consideration.—Where defendants, in a suit on a note, proceeded upon the theory that failure of title to a part of mining claims, for which the note was given, was a complete defense and no evidence was given as to the value of the land to which the defective titles applied, they cannot upon appeal obtain a retrial on the theory there was partial failure of consideration. *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399. It is not necessary that a consideration for a promissory note pass directly to the maker, but it is sufficient if it passes to a third party. *Wurlitzer v. Rossman*, 196 A. 78, 190 S. W. 636.

For cases where failure of consideration is considered, see *Catterlin v. Lusk*, 98 A. 182, 71 S. W. 1109; *Holmes v. Farris*, 97 A. 305, 71 S. W. 116; *Hacker v. Brown*, 81 Mo. 68.

Sec. 816. "Accommodation party" defined.—An accommodation party is one who has signed the instrument as a maker, drawer, acceptor, or endorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. (R. S. 1909, § 10000.)

Accommodation paper.—Before the adoption of the present negotiable instrument law parol evidence was, and since its adoption is, admissible, between the parties, to show that ostensible maker signed the note as surety. *Long v. Mason*,

273 Mo. 266, 200 S. W. 1062. Accommodation makers are entitled, in action by a payee upon a negotiable promissory note, signed by them and in addition secured by the maker's deed of trust in land, to show that, as between them and the maker, there were sureties. *Id.* An indorser on a note cannot escape liability by showing that he received none of the proceeds and acted merely for the accommodation of the one who negotiated it. *Eaves v. Keeton*, 196 A. 424, 193 S. W. 629.

Under the common law, an accommodation maker of a note is a principal, and is liable as such to a *bona fide* holder, and not as surety. *Maffat v. Greene*, 149 Mo. 48, 50 S. W. 809. Where such paper is put in circulation, it is both a request to advance the money upon it and a promise to repay same, and this is a sufficient consideration to bind any one whose name is on the instrument as a party thereto. *Maffat v. Greene*, 149 Mo. 48, 50 S. W. 809. For further discussion of consideration of accommodation paper, see *Chicago etc. Co. v. Brady*, 165 Mo. 197, 65 S. W. 303; *Moore v. Maddock*, 33 Mo. 575.

Sec. 817. Instrument, when negotiated.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. (R. S. 1909, § 10001.)

Negotiation in general.—This section cited and applied, and held that, in connection with Sec. 820, it does not attempt to provide an exclusive method for the transfer of such instrument, but applies only to such transfer as shall preserve "negotiability." *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399. Delivery actual or constructive during the lifetime is essential to vest title. *Chandler v. Hedrick*, 187 A. 664, 173 S. W. 93.

A note will not convey title to an endorsee unless delivered during lifetime of the endorser. *Lowrey v. Danforth*, 95 A. 441, 69 S. W. 39. See, also, *Lowrie v. Zunkel*, 49 A. 153; *Morris v. Butler*, 138 A. 378, 122 S. W. 377; *Sublette v. Brewington*, 139 A. 410, 122 S. W. 1150.

Sec. 818. Indorsement, where written and when sufficient. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. (R. S. 1909, § 10002.)

Indorsement.—The indorsement of the name of a corporation, payee of a promissory note, on the back thereof, by means of a rubber stamp, was a sufficient written indorsement under this section and preceding sections, when there was substantial testimony that such indorsement was ratified by the officers of the corporation. *Trust Co. v. Range Co.*, 196 A. 206, 190 S. W. 1045.

Sec. 819. Indorsement must be of entire instrument.—The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part it may be indorsed as to the residue. (R. S. 1909, § 10003.)

Sec. 820. Special and blank indorsements.—An indorsement may be either special or in blank; and may also be either restrictive or qualified, or conditional. A special indorsement specifies the person to whom or to whose order the instrument is

to be payable; and the indorsement of such indorsee is necessary to further the negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. (R. S. 1909, § 10004.)

Section cited and construed. *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399: held, this section and Sec. 817 did not attempt to prove an exclusive method for the transfer of such instrument, but applied only to such transfers as shall preserve "negotiability" under this section and also Sec. 10160. A person in possession of a negotiable instrument is presumed to be the holder thereof, and third persons, dealing in good faith with him as holder, cannot be taken to account by the real owner who clothed him with all the indicia of true ownership. *Miller v. Bank*, 193 A. 498, 186 S. W. 547.

Sec. 821. Holder may convert blank into special indorsement.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (R. S. 1909, § 10005.)

Indorsement in blank.—See notes to preceding section. An undated indorsement creates a *prima facie* presumption that it was made before maturity. *Crawford v. Johnson*, 87 A. 478.

Sec. 822. Indorsements, when restrictive—An indorsement is restrictive which either: (1) Prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (R. S. 1909, § 10006.)

See notes to two preceding sections.

Sec. 823. Rights conferred by restrictive indorsement.—A restrictive indorsement confers upon the indorsee the right: (1) To receive payment for the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his rights as such indorsee where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. (R. S. 1909, § 10007.)

Sec. 824. Qualified indorsements.—A qualified indorsement constitutes the indorser a mere assignor of the title of the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. (R. S. 1909, § 10008.)

Section cited and applied. *Bank v. Phillip*, 172 A. 404, 158 S. W. 448: Held, the mere delivery for value of a promissory note, drawn to the maker's own order, imparts no vital force to the instrument, but leaves it a nullity in the hands of the holder, and if the note has more than one maker, who are partners, and by its terms is drawn to the order of all, it must be indorsed by all.

Sec. 825. Conditional indorsements.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make the payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. (R. S. 1909, § 10009.)

Sec. 826. Extent of special indorser's liability.—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as take the title through his indorsement. (R. S. 1909, § 10010.)

Sec. 827. Where payable to two or more payees, all must indorse.—Where such an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. (R. S. 1909, § 10011.)

Sec. 828. Indorsed to "cashier," to whom payable.—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. (R. S. 1909, § 10012.)

Sec. 829. Name of payee wrongly spelled.—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature. (R. S. 1909, § 10013.)

Sec. 830. Indorsement in representative capacity.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. (R. S. 1909, § 10014.)

Sec. 831. Effect of date after maturity.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue. (R. S. 1909, § 10015.)

Sec. 832. Place of indorsement.—Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated. (R. S. 1909, § 10016.)

Sec. 833. Negotiable until restrictively indorsed.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. (R. S. 1909, § 10017.)

Sec. 834. Holder may strike out any indorsement unnecessary to his title.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. (R. S. 1909, § 10018.)

Striking out indorsement.—Section cited and applied. *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399. Where any person who has indorsed a bill of exchange or note to another, whether for value or for purpose of collection, shall come into the possession thereof again, he shall be regarded, unless the contrary appear, as a bona fide holder.

As to right to strike out indorsements, see *Davis v. Christy*, 8 Mo. 569; *Glasscock v. Bank*, 8 Mo. 443; *Hunter v. Hempstead*, 1 Mo. 67. See *Finney v. Turner*, 10 Mo. 209.

Sec. 835. Transfer vests in transferee, when.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer, had therein, and the transferee acquires, in addition, the right to enforce the instrument against one who signed for the accommodation of his transferer, and the right to have the indorsement of the transferer if omitted by accident or mistake. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. (R. S. 1909, § 10019.)

Section cited and applied. *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399. Held section is not intended to prescribe an exclusive method by which contracts of this character might be transferred.

Transfer by delivery.—A formal indorsement of a note is not in every case essential to pass title. *Bank v. Stam*, 186 A. 439, 171 S. W. 567. In general to hold an accommodation maker liable under this section the holder must be one in due course. *Long v. Shafer*, 185 A. 641, 171 S. W. 690. Section cited and applied and held no application where the pleaded case presented title by indorsement and not one resting upon the mere right to have an omitted indorsement supplied. *Hance v. Hayward* 183 A. 217, 170 S. W. 429.

Barnard State Bank v. Fesler, 89 A. 217; *Jacoby v. Ross*, 12 A. 577; *Frazier v. Gibson*, 7 Mo. 271; *Lewis v. Bowen*, 29 Mo. 202.

Sec. 836. Instruments when negotiated back.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. (R. S. 1909, § 10020.)

Sec. 837. Holder may sue.—The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument. (R. S. 1909, § 10021.)

Section cited and applied in *Silverthorne v. Lumber Co.*, 190 A. 176, 716 S. W. 441. In action against a corporation on a promissory note, which it claimed to have paid by issuing preferred stock for a certain amount and by paying the balance in cash, evidence held sufficient to support the verdict for plaintiff.

As to operation and effect of endorsement to pass title, see *Thomas v. Wash* 1 Mo. 665; *Brady v. Chandler*, 31 Mo. 28; *McLeod v. Snyder*, 110 Mo. 298, 19 S. W. 494. See Sec. 994.

Sec. 838. Holder in due course.—A holder in due course is a holder who has taken the instrument under the following conditions: (1) That it is complete and regular upon its face; (2) that he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact; (3) that he took it in good faith and for value; (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (R. S. 1909, § 10022.)

Holder in due course.—Section cited and applied. *Long v. Mason*, 273 Mo. 266, 171 S. W. 567. Section cited and applied. *Bathgate v. Bank*, 199 A. 583 205 S. W. 875. *Held*, a bank holding a certified check on which payment is stopped has the right to have contending claimants to the fund, litigate and judicially determine who is rightfully entitled thereto. An indorsee cannot shut his eyes to things apparent on the face of the instrument and secure security on the mere assertion that he did not know. *Bank v. Helmbacher*, 199 A. 173, 205 S. W. 875. The holder of a negotiable note, indorsed in blank before it is due by the payee, is prima facie the owner of it, and is presumed to hold it in good faith and without notice. *u Miller v. Bank*, 193 A. 498, 186 S. W. 547.

A note taken before maturity for a pre-existing debt is taken in due course. *Langford v. Varner*, 65 A. 370; *Fitzgerald v. Barker*, 96 Mo. 661, 10 S. W. 45.

A note taken as collateral security for a debt then created and without notice of equities, is held for value. *Lee v. Turner*, 89 Mo. 489, 14 S. W. 505. But the rule is otherwise in case of note taken as collateral security for a pre-existing debt. *Leowen v. Forsee*, 137 Mo. 29, 38 S. W. 712.

As to constructive notice and facts sufficient to put taker of note on inquiry. *Leavitt v. Taylor*, 163 Mo. 158, 63 S. W. 385; *Edwards v. Thomas*, 66 Mo. 468. *First State Bank v. Hammond*, 104 A. 403, 79 S. W. 493; *Borgess Inv. Co. v. Vette*, 142 Mo. 560, 44 S. W. 754.

Effect of actual notice of defenses. *Studebaker Mfg. Co. v. Dickson*, 70 Mo. 272.

As to what notice may be implied from relation of the parties. *Merchants Nat'l Bank v. Lovitt*, 114 Mo. 519, 21 S. W. 825; *Benton v. Bank*, 122 Mo. 332, 26 S. W. 975.

Section cited and construed. *Greisser v. Emmons*, 178 A. 28, 161 S. W. 63. Where a person who indorsed a stolen check to accommodate the thief, the check being more than thirty days old, was the holder in due course, held in error to treat as a question of fact under the circumstances involved. Where a check payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed one in due course. *Id.*

Sec. 839. Holder when not in due course.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. (R. S. 1909, § 10023.)

Sec. 840. Effect of notice of infirmity.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. (R. S. 1909, § 10024.)

Section cited and applied. *Jones v. Bank*, 144 A. 428, 128 S. W. 829. In the issues involved under this, and the following sections, plaintiff was entitled to take the judgment of the jury. This section, and also preceding sections, simply put in statutory form the rule of the common law as previously interpreted by many courts. *Link v. Joelson*, 158 A. 63, 139 S. W. 588.

Sec. 841. Title, when defective.—The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. (R. S. 1909, § 10025.)

See notes to preceding section. Plaintiff bank was the holder of a note in due course, which had been given by a purchaser of a saloon, including a license as a part of the price; *held*, entitled to recover, the bank being a bona fide purchaser, although a saloon license was not assignable and that part of the consideration was illegal. *Bank v. Reed*, 192 A. 344, 180 S. W. 1002. Section cited and applied, and held the failure of consideration does not place the burden on holder to prove himself the holder in due course. *Bank v. Wood*, 189 Mo. 62, 173 S. W. 1093.

Sec. 842. What constitutes notice of infirmity.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. (R. S. 1909, § 10026.)

Section cited and applied, and *held*, if an indorsee had actual knowledge at the time of taking note that the place of payment had been removed or changed, he cannot be "the holder in due course." *Bank v. Helmbacher*, 199 A. 173, 201 S. W. 383. Where a title of a negotiable promissory note is defective, the burden is upon the holder to show that he took the note in good faith for value and without any notice of defect in title. *Miller v. Bank*, 193 A. 498, 186 S. W. 547.

Sec. 843. Holder in due course may enforce payment.—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. (R. S. 1909, § 10027.)

Right of bona fide purchaser.—Section cited and applied. *Bank v. Reed*, 192 A. 344, 180 S. W. 1002. Where a part of the consideration for a note was illegal; *held* bank being bona fide purchaser, entitled to recover. The payee of a negotiable note is not the holder in due course, the instrument not having been negotiated to him. Distinction drawn between the holder and the holder in due course. *Long v. Shafer*, 185 A. 641, 170 S. W. 690.

As to title and rights of *bona fide* purchasers, see *Kuch v. Cornett*, 79 A. 574; *Allen v. Harris*, 79 A. 490; *Neuhoff v. O'Reilly*, 93 Mo. 164, 6 S. W. 78. One purchasing from a *bona fide* holder acquires his title. *First Nat'l Bank v. Stanley*, 46 A. 440. As to defenses available against *bona fide* purchasers, see *Neuhoff v. O'Reilly*, 93 Mo. 164, 6 S. W. 78; *Comings v. Leedy*, 114 Mo. 454, 21 S. W. 804; *Famous Shoe etc. Co. v. Crosswhite*, 124 Mo. 34, 27 S. W. 397.

Sec. 844. Holders, other than in due course.—In the hands of any holder other than the holder in due course, a negotiable instrument is subject to the same defenses as if it was non-negotiable.

But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. (R. S. 1909, § 10028.)

Purchasers after maturity.—See notes to preceding section. Distinction drawn between the holder and the holder in due course. *Long v. Shafer*, 185 A. 641, 171 S. W. 690. Certain facts examined and held not to constitute appellant "holder in due course." *Long v. Mason*, 273 Mo. 366, 200 S. W. 1062. Where one of the makers to a promissory note negotiated it after maturity the transferee takes it under this section subject to the defenses though it was used for a purpose other than the one for which the accommodation maker signed it. *Schlamp v. Manewel*, 196 A. 114, 190 S. W. 658. As to defenses against purchasers after maturity, see *Kelly v. Staed*, 136 Mo. 430, 37 S. W. 1110; *Williams v. Baker*, 100 A. 284, 73 S. W. 339.

Sec. 845. Burden of proof on holder when defective title is shown.—Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. (R. S. 1909, § 10029.)

Section cited and applied, and *held*, where a defendant pleads payment of a note or other obligation, the burden is upon him to prove payment and that burden is not shifted by any presumption. *Brannock v. Jaynes*, 197 A. 150, 193 S. W. 51. Where the title of a negotiable promissory note is defective, the burden is upon the holder to show that he took the note in good faith, for value, without any notice of defect of title. *Miller v. Bank*, 193 A. 498, 186 S. W. 547. Under this section, and also Sec. 838, the failure of consideration does not place the burden on the holder to prove himself the holder in due course. *Polk v. Wood*, 189 A. 62, 173 S. W. 1093.

Sec. 846. Liability of maker.—The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. (R. S. 1909, § 10030.)

Section cited and applied. *Long v. Mason*, 273 Mo. 266, 173 S. W. 1093; evidence held admissible to show relationship between accommodation makers and makers, in order that the former might assert their equities under the law of subrogation. The change of the place of payment or the addition of a place, when no place is specified, and the removal of the place of payment, under the facts, defeated recovery. *Bank v. Helmbacher*, 199 A. 173, 201 S. W. 383.

As to when maker is estopped to deny competency or rights of payee, see *St. Joseph Fire and Marine Ins. Co. v. Hauck*, 71 Mo. 465; *First Nat'l Bank v. Gillilan*, 72 Mo. 77.

Sec. 847. Liability of drawer.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or

to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. (R. S.) 1909, § 10031.)

Section cited and applied, and held the death of a drawer of a check operates as a revocation of the payee's authority. *Fisher v. Bognell*, 194 A. 581, 186 S. W. 1097.

Sec. 848. The acceptor.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits: (1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) the existence of the payee and his capacity to indorse. (R. S. 1909, § 10032.)

Under this section the bank which pays the check drawn on it, or one who receives the check in due course in good faith is precluded from disputing the genuineness of the drawer's signature. *McClendon v. Bank*, 188 A. 417, 174 S. W. 203. The payment of a check or bill of exchange by the drawee is equivalent to its acceptances. *Bank v. Bank*, 148 A. 1, 129 S. W. 57.

Sec. 849. Indorser's liability.—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. (R. S. 1909, § 10033.)

One who places his signature on a note otherwise than its maker, drawer or acceptor is deemed an indorser, unless he clearly indicates to be bound in some other capacity. *Eaves v. Keeton*, 196 A. 424, 193 S. W. 629. Under this section a person who placed his signature upon a promissory note held an indorser. *Bank v. Hanlon*, 183 A. 243, 166 S. W. 830.

Sec. 850. Persons signing in blank before delivery.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third, he is liable to the payee and to all subsequent parties; (2) if the instrument is payable to the order of the maker, or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer; (3) if he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. (R. S. 1909, § 10034.)

As to liability of endorser as original promisor, see *Siemens and Halske Elec. Co. v. Ten Broek*, 97 A. 173, 70 S. W. 1092; *Oexner v. Loehr*, 106 A. 412, 80 S. W. 690; *Herrick v. Edwards*, 106 A. 633, 81 S. W. 466.

One who indorses a negotiable promissory note in blank, not being a payee or endorsee thereof, is *prima facie* deemed a maker, yet this rule is not applicable where the note is made payable to order of drawer. *First Nat'l Bank v. Payne*, 111 Mo. 291, 20 S. W. 41.

An indorser after delivery to the payee is liable as guarantor. *Corbyn v. Brokmeyer*, 84 A. 649.

Sec. 851. Liability of persons negotiating.—Every person negotiating an instrument by delivery or by qualified indorse-

ments warrants: (1) That the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills or notes. (R. S. 1909, § 10035.)

Section cited and applied and held a promissory note, negotiable in form, does not lose its negotiable quality by becoming overdue, but indorsing it after due, it becomes a new bill at sight. *Hawkins v. West*, 167 A. 439, 151 S. W. 789.

The vendor of a bill or note is responsible for its genuineness, although not endorsed by him, and if the signatures of the parties thereto are forgeries, the consideration fails. *Thompson v. McCullough*, 31 Mo. 224.

Sec. 852. Indorsers without qualification.—Every indorser who indorses without qualification warrants to all subsequent holders in due course: (1) The matters and things mentioned in subdivisions one, two and three of the next preceding section; and (2) that the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. (R. S. 1909, § 10036.)

Warranty.—The liability of an endorser of negotiable paper is secondary, and, as a general rule, contingent upon the exercise of due diligence by the holder in demanding payment of the maker, and giving notice of dishonor to the indorser. There are exceptional cases excusing demand and notice, but mere insolvency of maker or acceptor not sufficient. *Jamison v. Copher*, 35 Mo. 483. See Sec. 856.

Sec. 853. Indorsement of instruments negotiable by delivery.—Where a person places his indorsement on an instrument negotiable by delivery, he incurs all the liabilities of an indorser. (R. S. 1909, § 10037.)

Sec. 854. Indorsers when liable in the order in which they indorse.—As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorseees who indorse are deemed to indorse jointly and severally. (R. S. 1909, § 10038.)

Indorsers, in respect to one another, are *prima facie* liable in the order in which they indorsed, but evidence admissible to show that they have agreed otherwise among themselves. *Eaves v. Keeton*, 196 A. 424, 193 S. W. 629.

Sec. 855. Liability of brokers.—Where a broker or other agent negotiates an instrument without indorsement; he incurs

all the liabilities prescribed by section 851, unless he discloses the name of his principal, and the fact that he is acting only as agent. (R. S. 1909, § 10039.)

Sec. 856. Presentment for payment.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawers and indorsers. (R. S. 1909, § 10040.)

Necessity of presentment in general.—Section cited and applied. *Bank v. Helmbacher*, 199 A. 173, 201 S. W. 383: *Held*, the shearing off of the place of payment is the same as a change of the place of payment, or the addition of a place where no place is specified. This section includes an accommodation maker as well as the real maker. *Long v. Shafer*, 185 A. 641, 171 S. W. 690.

Presentment for payment not necessary to bind maker. *Napper v. Blank*, 54 Mo. 131. But essential to fix liability of indorser. *Faulkner v. Faulkner*, 73 Mo. 327.

Sec. 857. Presentment must be made, when.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (R. S. 1909, § 10041.)

Demand notes are not deemed payable until presented or payment demanded. *Johnson v. Bank*, 173 Mo. 171, 73 S. W. 191.

Sec. 858. Presentment for payment, to be made by whom, how.—Presentment for payment, to be sufficient, must be made: (1) By the holder, or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; (4) to the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. (R. S. 1909, § 10042.)

Presentment for payment.—As to who may make demand. *Commercial Bank v. Barksdale*, 36 Mo. 563; *Townsend v. D. G. Co.*, 85 Mo. 503.

Presentment must be within a reasonable time, but what is reasonable time will depend upon circumstances. *Singer v. Dickneite*, 51 A. 245. As to checks, see *Marbourg v. Brinkman*, 23 A. 511.

Sec. 859. Id. Where presented.—Presentment for payment is made at the proper place: (1) Where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified, but the address of the person to make payment is given in the instrument, and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place

of business or residence of the person to make payment; (4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. (R. S. 1909, § 10043.)

Demand made where.—For decisions touching proper place of presentment, but rendered prior to enactment of above section, see *Townsend v. D. G. Co.*, 85 Mo. 503; *Simmons v. Belt*, 35 Mo. 461; *Bateson v. Clark*, 37 Mo. 31; *Jarvis v. Garnett*, 39 Mo. 268.

Sec. 860. *Id.* Instrument must be exhibited.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. (R. S. 1909, § 10044.)

See *Draper v. Clemens*, 4 Mo. 52.

Sec. 861. *Id.* Presented during banking hours.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make the payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. (R. S. 1909, § 10045.)

Sec. 862. Party primarily liable deceased, presentment to whom.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found. (R. S. 1909, § 10046.)

Sec. 863. Persons liable as partners, presentment made to whom.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. (R. S. 1909, § 10047.)

See *Hunter v. Hempstead*, 1 Mo. 67.

Sec. 864. When presentment to be made to all persons liable.—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to all of them. (R. S. 1909, § 10048.)

Sec. 865. Presentment for payment not required, when.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. (R. S. 1909, § 10049.)

Sec. 866. When not required to charge an indorser.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. (R. S. 1909, § 10050.)

Where an indorser promises to pay a note with full knowledge of the facts, he is deemed to have waived the requirement of presentment for payment and notice. *Belch v. Roberts*, 191 A. 243, 177 S. W. 1062.

Sec. 867. Delay, when excused.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. (R. S. 1909, § 10051.)

Sec. 868. Presentment for payment dispensed with, when. Presentment for payment is dispensed with: (1) Where, after the exercise of reasonable diligence, presentment, as required by this chapter, cannot be made; (2) where the drawee is a fictitious person, by waiver of presentment, express or implied. (R. S. 1909, 10052.)

For cases where demand held unnecessary, see *McKee v. Boswell*, 33 Mo. 567; *Shepherd v. Ins. Co.*, 8 Mo. 272; *Edwards v. Thomas*, 66 Mo. 468.

Sec. 869. Instrument dishonored by nonpayment, when.—The instrument is dishonored by nonpayment, when: (1) It is duly presented for payment and payment is refused or cannot be obtained; or (2) presentment is excused and the instrument is overdue and unpaid. (R. S. 1909, § 10053.)

A certificate of protest to an inland bill of exchange or note by a notary public establishes *prima facie* proof of demand, refusal of payment and notice to its holder necessary to fixing the liability of the indorser. *Eaves v. Keeton*, 196 A. 424, 193 S. W. 629.

Sec. 870. Right of recourse accrues to holder.—Subject to the provisions of this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse on all parties secondarily liable thereon accrues to the holder. (R. S. 1909, § 10054.)

Section cited and applied. *Long v. Shafer*, 185 A. 641, 171 S. W. 690.

Sec. 871. Days of grace—instruments falling due on Sunday or Saturday, when presented.—Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity fall upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday, when the entire day is not a holiday. (R. S. 1909, § 10055.)

Section cited and applied. *State v. R. R.*, 239 Mo. 196 l. c. 319, 143 S. W. 785. See also Sec. 5848.

Sec. 872. Time of payment, how determined.—Where the instrument is payable at a fixed period after date, after sight, or

after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment. (R. S. 1909, § 10056.)

Sec. 873. Instrument payable at bank, equivalent to order on bank.—Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. But where the instrument is made payable at a fixed or determinable future time, the order to the bank to pay is limited to the day of maturity only. (R. S. 1909, § 10057.)

A shearing off of the place of payment is the same as change of the place of payment or the addition of the place of payment where no place is specified. *Bank v. Helmbacher*, 199 A. 173, 201 S. W. 383.

Sec. 874. Payment made in due course, when.—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. (R. S. 1909, § 10058.)

Sec. 875. Notice of dishonor to be given.—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. (R. S. 1909, § 10059.)

A certificate of protest to an inland bill of exchange or note by a notary public establishes *prima facie* proof of demand, refusal of payment and notice to dishonor necessary to fixing the liability on the indorser. *Eaves v. Keeton*, 196 A.M. 424, 193 S. W. 629. As to necessity of notice to indorsers, see *Faulkner v. Faulkner*, 73 Mo. 327, *Bogy v. Keil*, 1 Mo. 743; *Wheeler v. Frost*, 70 Mo. 185; *Napper v. Blank* 54 Mo. 131.

Sec. 876. Notice given by whom.—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. (R. S. 1909, § 10060.)

Notice may be given by any party to the instrument. *Glasgow v. Pratte*, 8 Mo. 336. Or by the notary who protests the bill. *Renick v. Robbins*, 29 Mo. 339 *Commercial Bank v. Barksdale*, 36 Mo. 463.

Sec. 877. May be given agent.—Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. (R. S. 1909, § 10061.)

Sec. 878. Notice by holder inures for benefit of all.—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. (R. S. 1909, § 10062.)

Sec. 879. Notice by party entitled to give notice.—Where notice is given by or on behalf of a party entitled to give notice, it avails for the benefit of the holder and all parties subsequent to the party to whom notice is given. (R. S. 1909, § 10063.)

Sec. 880. Instrument dishonored in hands of agent.—Where an instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder. (R. S. 1909, § 10064.)

Sec. 881. Written notice need not be signed.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. (R. S. 1909, § 10065.)

Sec. 882. Notice may be in writing or oral.—The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. (R. S. 1909, § 10066.)

The notice may be either verbal or in writing. *First Nat'l Bank v. Hatch*, 78 Mo. 13; *Glasgow v. Pratte*, 8 Mo. 336.

No particular form of notice is required; it is sufficient if it in express terms necessarily implicates the instrument and conveys the information that same has not been accepted or paid upon due presentation. *Renick v. Roberts*, 28 Mo. 339; *Townsend v. D. G. Co.*, 85 Mo. 503.

Sec. 883. May be given to party or agent.—Notice of dishonor may be given either to the party himself or to his agent in that behalf. (R. S. 1909, § 10067.)

Sec. 884. When party is dead, notice to be given to personal representative.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. (R. S. 1909, § 10068.)

Sec. 885. Notice to one partner is notice to firm.—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. (R. S. 1909, § 10069.)

Notice of dishonor to one member of the firm is sufficient, though the partnership is dissolved. *Fourth Nat'l Bk. v. Altheimer*, 91 Mo. 190, 3 S. W. 858; *Bouldin v. Page*, 24 Mo. 594.

Sec. 886. Notice to joint parties.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the other. (R. S. 1909, § 10070.)

Sec. 887. Notice to bankrupt.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. (R. S. 1909, § 10071.)

Sec. 888. Notice to be given, when.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter. (R. S. 1909, § 10072.)

Sec. 889. Notice to residents, given when and where.—Where the person giving and the person to receive notice resides in the same place, notice must be given within the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following. (R. S. 1909, § 10073.)

Sec. 890. Notice to persons in different places.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision. (R. S. 1909, § 10074.)

As to notice of nonpayment by mail, see *Bank of Missouri v. Vaughan*, 36 Mo. 90; *Barret v. Evans*, 28 Mo. 331; *Rolla State Bank v. Pezoldt*, 95 A. 404, 69 S. W. 51.

Sec. 891. Notice through postoffice sufficient.—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. (R. S. 1909, § 10075.)

The statute is complied with regard to notice of dishonor of a note under this section where it is shown that notice was duly mailed, addressed to defendant at his proper postoffice address, regardless of miscarriage of mails. *Eaves v. Keeton*, 196 A. 424, 193 S. W. 629.

Sec. 892. When deemed deposited in postoffice.—Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under control of the postoffice department. (R. S. 1909, § 10076.)

Sec. 893. Notice to antecedent parties—Where the party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. (R. S. 1909, § 10077.)

See notes to Sec. 891.

Sec. 894. Must be notified at given address.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows.: (1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this chapter, it will be sufficient, though not sent in accordance with the requirements of this section. (R. S. 1909, § 10078.)

See notes to Sec. 891.

Sec. 895. Notice of dishonor may be waived.—Notice of dishonor may be waived, either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be expressed or implied. (R. S. 1909, § 10079.)

Where an indorser promises to pay a note with full knowledge of the facts he is deemed to have waived the requirement for presentment for payment and notice. *Belch v. Roberts*, 191 A. 243, 177 S. W. 1062. As to waiver of notice, see *Laumeier v. Hallock*, 103 A. 116, 77 S. W. 347; *Keller v. Ins. Co.*, 95 A. 627, 69 S. W. 612; *Jaccard v. Anderson*, 37 Mo. 91.

Sec. 896. Waiver, when binding.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. (R. S. 1909, § 10080.)

Sec. 897. Waiver, effect of.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. (R. S. 1909, § 10081.)

Sec. 898. Notice of dishonor dispensed with, when.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. (R. S. 1909, § 10082.)

Due inquiry and reasonable diligence required. *Fugitt v. Nixon*, 44 Mo. 295; *Greffet v. Dowdall*, 17 A. 280.

Sec. 899. Delay, when excused.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. (R. S. 1909, § 10083.)

Sec. 900. Notice not required, when.—Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is a person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment. (R. S. 1909, § 10084.)

Certain facts examined and held under this section the defendant, as maker of note, was not entitled to notice of dishonor. *Boand v. Stewart*, 193 A. 715, 188 S. W. 317.

Sec. 901. Notice to indorser not required, when.—Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment. (3) Where the instrument was made or accepted for his accommodation. R. S. 1909, § 10085.)

Section cited and applied and held that notice of dishonor is not required to be given to an indorser where the indorser is the person to whom the instrument is presented for payment. *Westinghouse v. Hodge*, 181 A. 232, 166 S. W. 1186.

Sec. 902. Notice of subsequent dishonor not required, when.—Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. (R. S. 1909, § 10086.)

After protest for nonacceptance and notice, the drawers and endorsers of a bill are responsible immediately to the holder, and failure to present bill again for payment does not release liability. *Lucas v. Ladew*, 28 Mo. 342. But see Sec. 943. See, also, *Renshaw v. Triplett*, 23 Mo. 213.

Sec. 903. Omission of notice not prejudicial, when.—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. (R. S. 1909, § 10087.)

Sec. 904. Negotiable instrument dishonored may be protested.—Where any negotiable instrument has been dishonored, it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange. (R. S. 1909, § 10088.)

See notes to Sec. 891.

Protest not necessary to fix liability of joint maker. *Butler v. Gambs*, 1 A. 466.

After notice of dishonor, protest not necessary to fix liability of indorser. *Williams v. Smith*, 21 Mo. 419.

Protest of check not necessary to hold drawer. *Nelson v. Kastle*, 105 A. 187, 79 S. W. 730.

Sec. 905. Negotiable instruments, when discharged.—A negotiable instrument is discharged: (1) By payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right. (R. S. 1909, § 10089.)

In an action to foreclose a deed of trust, defended on the theory that the note secured thereby has been paid, evidence held to warrant finding that the note had not been paid. *Brannock v. Jaynes*, 197 A. 150, 193 S. W. 51. Section cited and applied. Since provisions of law recognize estoppel in pais, such defense does not convert an action at law on a note to one in equity. *Bank v. Lee*, 193 A. 537, 182 S. W. 1016. In order that a note may operate as payment of another there must be an understanding between the parties to that effect. *Bank v. Rosenbaum*, 191 A. 559, 177 S. W. 693. Payment by stranger deemed a purchase and not a payment. *Vansandt v. Hobbs*, 84 A. 628.

Sec. 906. Persons secondarily liable, how discharged.—A person secondarily liable on the instrument is discharged: (1) By any act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party, except when such discharge is had in bankruptcy proceedings; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by an agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. (R. S. 1909, § 10090.)

Discharge.—See notes to preceding section. Section cited and applied. *Long v. Shafer*, 185 A. 641, 171 S. W. 690. In an action on a promissory note, between original parties, defendant was entitled to show by parol that, being accommodation makers, release by the payee of collateral security, without their consent, acted as a release to them, pro tanto.

Release of maker operates as discharge of indorser. *Eggemann v. Henschen*, 56 Mo. 123; *Broadway Savings Bank v. Schmucker*, 7 A. 171.

Valid agreement between maker and payee to give further time will discharge indorser, unless he assents to it. *Globe Mutual Ins. Co. v. Carson*, 31 Mo. 218. But indorser will not be discharged if such agreement to extend time is without consideration. *Smith v. Warren*, 88 A. 285. Nor if indorser's liability has become fixed. *Priest v. Watson*, 7 A. 579.

Sec. 907. Instrument not discharged, when.—Where the instrument is paid by a party secondarily liable thereon, it is not

discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except: (1) Where it is payable to the order of a third person and has been paid by the drawer; and (2) where it was made or accepted for accommodation and has been paid by the party accommodated. (R. S. 1909, § 10091.)

Sec. 908. Holder may renounce rights.—The holder may expressly renounce his rights against any party to the instrument before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. (R. S. 1909, § 10092.)

Section cited and construed, and *held*, the holder may renounce the credit on a note. *Dickinson v. Vail*, 199 A. 458, 203 S. W. 635. Under this section, and also under Sec. 906, the reservation of the right to renounce cannot be implied from the acts or contract of the parties but must be expressly made. *Phenix Bank v. Hanlon*, 183 A. 243, 166 S. W. 830.

Sec. 909. Cancellations, when inoperative.—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled, the burden of the proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority. (R. S. 1909, § 10093.)

See *Boulware v. Bank*, 12 Mo. 532; *Greenbaum v. Elliott*, 60 Mo. 25.

Sec. 910. Instruments materially altered.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alterations and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce payment thereof according to its original tenor. (R. S. 1909, § 10094.)

For construction of this and following sections, see *Bank v. Helmbacher*, 199 A. 173, 201 S. W. 383; *held*, change in the place of payment with no intention to defraud is a material alteration; change in the date; in the sum payable, either for principal or interest; the number of the relation of the parties to the medium of currency in which payment is to be made, or which adds the place of payment, where no place of payment is specified, or any other change, or addition, which alters the effect of the instrument in any respect, is a material alteration. As to effect of alteration, see *Kingston Savings Bank v. Bosserman*, 52 A. 269; *Middaugh v. Elliott*, 61 A. 601.

Sec. 911. What are material alterations.—Any alteration which changes: (1) The date; (2) the sum payable, either for

principal or interest; (3) the time or place of payment; (4) the number or relation of the parties; (5) the medium of currency in which payment is to be made, or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. (R. S. 1909, § 10095.)

See notes to preceding section.

ARTICLE II.

BILLS OF EXCHANGE.

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Sec. 912. Bills of exchange defined.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. (R. S. 1909, § 10096.)

Bill of exchange defined.—Taylor v. Newman, 77 Mo. 257; Lockhart v. Moss; 53 A. 633; Ivory v. Bank, 36 Mo. 475.

A check is not a bill of exchange. Hays v. Bank, 75 A. 211. But see Sec. 971.

A U. S. commissary voucher not a bill of exchange. Koch v. Branch, 44 Mo. 542.

Sec. 913. Drawee not liable until after acceptance.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the

drawee is not liable on the bill unless and until he accepts the same. (R. S. 1909, § 10097.)

Sec. 914. Bills, to whom addressed.—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. (R. S. 1909, § 10098.)

Sec. 915. Inland and foreign bills of exchange.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill. (R. S. 1909, § 10099.)

Where a drawer of a bill of exchange, payable in Illinois, made a verbal agreement in Missouri before the bill was drawn, to accept and pay the bill, the law of Illinois, being the law of the place of performance, governs, and in the absence of proof as to what the law of Illinois was, and common law rule was applicable. *Bank v. Commission Co.*, 139 A. 110, 120 S. W. 648. As to foreign bills of exchange see *Linville v. Welsh*, 29 Mo. 203.

Sec. 916. When holder may treat instrument as bill or promissory note.—Where a bill drawer and a drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. (R. S. 1909, § 10100.)

Sec. 917. Referee in case of need.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in a case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit. (R. S. 1909, § 10101.)

Sec. 918. Acceptance defined.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. (R. S. 1909, § 10102.)

Historical.—This section appears to supersede the previous, similar provisions of R. S. 1899, Sec. 443.

Acceptance.—Where the cashier of a bank received about midnight certain checks from the payee, with the request that they be credited to his account when the bank opened at nine o'clock next morning, the drawer of the checks was not precluded from countermanding payment on same at any time before they were actually paid or accepted in writing. *Kellogg v. Bank*, 176 A. 288, 162 S. W. 643. Acceptance must be in writing. *Nichols v. Bank*, 55 A. 81; *Dickinson v. Marsh*, 57 A. 566; *Lee v. Porter*, 18 A. 377. See also *Garrettson v. Bank*, 47 Fed. 867.

Sec. 919. Holder may require acceptance to be written.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and, if such re-

quest is refused, may treat the bill as dishonored. (R. S. 1909, § 10103.)

This section appears to supersede the previous, similar provisions of R. S. 1899, Sec. 446.

Failure to accept.—No action lies in favor of the payee of a draft against the drawee because of nonacceptance by the latter. *Clements v. Yeates*, 69 Mo. 623.

Sec. 920. Effect of acceptance written on a paper other than the bill itself.—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown, and who, on the faith thereof, receives the bill of value. (R. S. 1909, § 10104.)

Historical.—This section appears to supersede the previous, similar provisions of R. S. 1899, Sec. 444.

Sec. 921. Unconditional promise in writing deemed an actual acceptance.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the face thereof, receives the bill for value. (R. S. 1909, § 10105.)

Historical.—This section appears to supersede the previous, similar provisions of R. S. 1899, Sec. 445.

Promise to Accept.—A telegram to another saying "Will honor your draft \$1500, telegram attached," is, under this section, an unconditional acceptance of said draft so far as the rights of such innocent purchaser are concerned. The words "telegram attached" do not make the telegram a conditional acceptance. *Ensign v. Clark Bros.*, 195 A. 584, 193 S. W. 961.

As to effect of failure to accept, see *Lockhart v. Moss*, 53 A. 633; *Dickinson v. Marsh*, 57 A. 566; *Hays v. Bank*, 75 A. 211.

Sec. 922. Drawee allowed twenty-four hours in which to decide as to acceptance.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation. (R. S. 1909, § 10106.)

Sec. 923. Destruction of failure to return deemed an acceptance.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuse within twenty-four hours after delivery or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same. (R. S. 1909, § 10107.)

Historical.—This section appears to supersede the previous, similar provisions of R. S. 1899, Sec. 448.

Failure to accept.—The action of a bank in holding checks for more than twenty-four hours without returning them does not constitute an acceptance of them and make the bank liable for the amount of the checks under this section, where it is shown that the bank called up the other bank which issued the checks and notified it that it would not pay them and that no demand had been made for their return. *Bank v. Trust Co.*, 199 A. 491, 203 S. W. 674. The stamping of checks by a bank upon which the checks were drawn as "paid" does not affect the nonacceptance of an inland bill of exchange where a bank's conduct is induced by fraud. *Id.*

Sec. 924. Bill may be accepted before it is signed.—A bill may be accepted before it has been signed by the drawer, or while

otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. (R. S. 1909, § 10108.)

Sec. 925. Acceptance either general or qualified.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. (R. S. 1909, § 10109.)

Effect of qualified acceptance.—Ford v. Angelrodt, 37 Mo. 50.

Sec. 926. General acceptance.—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere. (R. S. 1909, § 10110.)

Sec. 927. Qualified acceptance.—An acceptance is qualified which is: (1) Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local; that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; the acceptance of some one or more of the drawees, but not of all. (R. S. 1909, § 10111.)

Qualified acceptance.—Section cited and applied. *Ensign v. Clark Bros.*, 195 A. 584, 193 S. W. 961: *Held*, where an acceptance of a draft given by telegram said "telegram attached" that such words would not be construed as making the acceptance conditional. If holder accepts conditional acceptance, he must show affirmatively that the condition has been complied with. *Ford v. Angelrodt*, 37 Mo. 50.

Sec. 928. Holder may refuse qualified acceptance.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and the indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. (R. S. 1909, § 10112.)

Right of holder.—Holder is entitled to an absolute and unconditional acceptance, according to tenor of bill, and may reject any other. *Ford v. Angelrodt*, 37 Mo. 50.

Sec. 929. Presentment for acceptance, when necessary.—Presentment for acceptance must be made: (1) Where the bill

is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable. (R. S. 1909, § 10113.)

Presentment for acceptance.—If a bill be in fact, though unnecessarily, presented, and acceptance refused, notice should be immediately given to the persons to whom the holder means to resort for payment, or they will, generally, be totally discharged from liability. *Glasgow & Harrison v. Copeland*, 8 Mo. 268.

Sec. 930. Presentment must be made within reasonable time.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he failed to do so, the drawer and all indorsers are discharged. (R. S. 1909, § 10114.)

Sec. 931. Presentment, when and to whom made.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and (1) where the bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2) where the drawee is dead, presentment may be made to his personal representatives; (3) where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of his creditors, presentment may be made to him or to his trustee or assignee. (R. S. 1909, § 10115.)

Presentment made when.—Presentment must be made within reasonable time. *Fugitt v. Nixon*, 44 Mo. 295. As to what is reasonable time depends upon the circumstances of the case. *Linville v. Welch*, 29 Mo. 203; *Salisbury v. Renick*, 44 Mo. 554.

Sec. 932. Not to be made on holidays.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 858 and 871 of this chapter. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day. (R. S. 1909, § 10116.)

See section 5848.

Sec. 933. Reasonable diligence required.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it

for payment is excused and does not discharge the drawers and indorsers. (R. S. 1909, § 10117.)

See *Shepard v. Insurance Co.*, 8 Mo. 272.

Sec. 934. Presentment for acceptance excused, when.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases: (1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill; (2) where, after the exercise of reasonable diligence, presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground. (R. S. 1909, § 10118.)

See *Shepard v. Insurance Co.*, 8 Mo. 272.

Sec. 935. Bill dishonored by nonacceptance, when.—A bill is dishonored by nonacceptance: (1) When it is duly presented for acceptance and such an acceptance as is prescribed by this chapter is refused or cannot be obtained; or (2) when a presentment for acceptance is excused and the bill is not accepted. (R. S. 1909, § 10119.)

Sec. 936. Bill not accepted within prescribed time, how treated.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers. (R. S. 1909, § 10120.)

Failure to accept within prescribed time.—If acceptance is refused, notice of same must be given to indorsers to fix their liability. *Glasgow & Harrison v. Copeland*, 8 Mo. 268. Notice need not be in writing. *First Nat'l Bank v. Hatch*, 78 Mo. 13.

Sec. 937. Bill dishonored, right of recourse accrues.—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holders, and no presentment for payment is necessary. (R. S. 1909, § 10121.)

Sec. 938. Foreign bills dishonored by nonacceptance must be protested.—Where a foreign bill, appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. (R. S. 1909, § 10122.)

Necessity of protest.—Section cited and applied. *Ensign v. Cutlery Co.*, 195 A. 585, 193 S. W. 961: *Held*, where evidence admitted, without objection, shows that draft, on being dishonored was protested, the absence from petition of the special allegation of protest cannot effect a judgment for plaintiff.

Sec. 939. Protest—requirements of.—The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify: (1) The time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. (R. S. 1909, § 10123.)

Requisites and sufficiency.—Where the notice of a check's dishonor was put in the postoffice to go by the proper post, it was immaterial to the rights of the holder whether it ever reached the drawer or not. *Bank v. Korn*, 179 S. W. 721.

As to requisites and sufficiency of protest, see *Johnson County Savings Bank v. Lowe*, 47 A. 151; *Faulkner v. Faulkner*, 73 Mo. 327. See, also, Sec. 995 and cases there cited.

Sec. 940. By whom made.—Protest may be made by: (1) a notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. (R. S. 1909, § 10124.)

By notary.—Foreign bills must be protested by notary public when such an officer is obtainable. *Bank v. Barksdale*, 36 Mo. 563.

Sec. 941. When made.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused, as herein provided. When a bill has been duly noted, the protest may be subsequently extended, as of the date of the noting. (R. S. 1909, § 10125.)

Section cited and applied. *Bank v. Korn*, 179 S. W. 721. *Held*, it was not necessary under this section that the drawer of a check, who had notified the bank in which it was drawn not to pay it, be notified of its protest.

Sec. 942. Where made.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance; it must be protested for nonpayment at the place where it is expressed to be payable, and no other presentment for payment to or demand on the drawee is necessary. (R. S. 1909, § 10126.)

Sec. 943. Bill protested for nonacceptance may be subsequently protested for nonpayment.—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. (R. S. 1909, § 10127.)

Protest for non-payment.—Protest for non-payment after protest for non-acceptance. See *Renshaw v. Triplett*, 23 Mo. 213.

Sec. 944. Proceedings when acceptor has been adjudged a bankrupt.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. (R. S. 1909, § 10128.)

Sec. 945. Protest, when dispensed with.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. (R. S. 1909, § 10129.)

Sec. 946. Protest may be made on copy, when.—Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. (R. S. 1909, § 10130.)

Sec. 947. Acceptance for honor.—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. (R. S. 1909, § 10131.)

Sec. 948. Must be in writing.—An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. (R. S. 1909, § 10132.)

Sec. 949. Acceptance for honor of drawer, when.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. (R. S. 1909, § 10133.)

Sec. 950. Acceptor for honor of drawer liable, to whom.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. (R. S. 1909, § 10134.)

Sec. 951. Liability of acceptor for honor.—The acceptor for honor by such acceptance engages that he will, on due presentment, pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. (R. S. 1909, § 10135.)

Sec. 952. Maturity, from when calculated.—Where a bill payable after sight is accepted for honor, its maturity is calcu-

lated from the date of the noting for nonacceptance, and not from the date of the acceptance for honor. (R. S. 1909, § 10136.)

Sec. 953. Dishonored bill must be protested before presentment.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. (R. S. 1909, § 10137.)

Sec. 954. Presentment, how made.—Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity; (2) if it is presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 890. (R. S. 1909, § 10138.)

Sec. 955. Provisions of section 867 to apply, when.—The provisions of section 867 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. (R. S. 1909, § 10139.)

Sec. 956. Bill dishonored by acceptor for honor must be protested.—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. (R. S. 1909, § 10140.)

Sec. 957. Payment for honor.—Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. (R. S. 1909, § 10141.)

Sec. 958. Must be attested by notarial act of honor.—The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. (R. S. 1909, § 10142.)

Sec. 959. Notarial act of honor founded on what.—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. (R. S. 1909, § 10143.)

Sec. 960. Who shall have preference.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. (R. S. 1909, § 10144.)

Sec. 961. Who discharged.—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is

paid are discharged, but the payer for honor is subrogated to, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. (R. S. 1909, § 10145.)

Sec. 962. Refusal to accept payment, effect of.—Where the holder of a bill refuses to receive payment *supra protest*, he loses his right of recourse against any party who would have been discharged by such payment. (R. S. 1909, § 10146.)

Sec. 963. Payer for honor entitled to bill and protest.—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonors, is entitled to receive both the bill itself and the protest. (R. S. 1909, § 10147.)

Sec. 964. Bills in a set.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. (R. S. 1909, § 10148.)

Sec. 965. Negotiated to different holders, effect of.—Where two or more parts of a set are negotiated to different holders in course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented him. (R. S. 1909, § 10149.)

Sec. 966. Indorsers, how liable.—Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. (R. S. 1909, § 10150.)

Sec. 967. Acceptance, how written.—The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. (R. S. 1909, § 10151.)

Sec. 968. Acceptor paying without delivery liable to holder. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at the maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. (R. S. 1909, § 10152.)

Sec. 969. Payment of one part discharges whole, when.—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. (R. S. 1909, § 10153.)

ARTICLE III.

PROMISSORY NOTES AND CHECKS.

Sec.	Sec.
970. Promissory note defined.	975. Check not an assignment of funds and bank not liable until after acceptance or certification.
971. Check defined.	976. Banks liability for non-payment of check
972. Check must be presented within reasonable time.	977. Banks liability on forged or raised check.
973. Certification equivalent to acceptance.	978. <i>Id.</i> Notice by mail.
974. Acceptance or certification discharges drawer and indorsers.	979. Banks liability for collections.

Sec. 970. Promissory note defined.—A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another signed by the maker engaged to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him. (R. S. 1909, § 10154.)

Historical.—This section appears to supersede the previous provision relating to the negotiability of promissory notes contained in R. S. 1899, Sec. 457, and also to supersede the provisions of Sec. 10175, R. S. 1909.

Promissory notes.—This section and applied. *Bank v. Ettenson*, 172 A. 404, 158 S. W. 448, *held*, the mere delivery for value of a promissory note drawn to the maker's own order, imparts no vital force to the instrument, but leaves it a nullity in the hands of the holder.

General construction.—Memorandum of indebtedness. *Brady v. Chandler*, 31 Mo. 28.

Note payable to maker's order a nullity until negotiated by maker's indorsement. *Lowrie v. Zunkel*, 49 A. 153.

Instrument construed as note rather than testamentary disposition of property. *Maze v. Baird*, 89 A. 348.

Notes negotiable in form *prima facie* import a valuable consideration. *Cox v. Sloan*, 158 Mo. 411, 57 S. W. 1052.

Note imports consideration, and burden of proving lack of same is upon maker or payer. *Glascock v. Glascock*, 217 Mo. 362, 380, 117 S. W. 67; *Lowrey v. Danforth*, 95 A. 441, 69 S. W. 39.

Under former statute, held that in suit on note petition must allege that same purported to be for value received. *Jacobs v. Gibson*, 77 A. 244; *Crawford v. Johnson*, 87 A. 478.

A note payable "with exchange" not negotiable. *Chandler v. Calvert*, 87 A. 368.

Possession of promissory note, payable to order and duly indorsed by payee, is *prima facie* evidence of title in holder. *Lowrey v. Danforth*, 95 A. 441, 69 S. W. 39; *Dawson v. Wombles*, 123 A. 340, 100 S. W. 547.

In suit by indorsee, where it was denied that plaintiff was *bona fide* purchaser for value, the admission of the indorsement of payee in evidence without proof of its authenticity, over defendant's objection, was error. *Hugumin & Co. v. Hinds*, 97 A. 346, 71 S. W. 479. And an admission of the execution of the note does not constitute waiver of proof of endorsement. *Hugumin & Co. v. Hinds*, 97 A. 346, 71 S. W. 479.

The words "for value received" are not alone sufficient to constitute a negotiable instrument. *Pinnell v. Meaks*, 99 A. 20, 23, 72 S. W. 461.

A due bill, while not negotiable, is a promissory note, and imports a consideration. *Locher v. Kuechenmeister*, 120 A. 701, 98 S. W. 92.

A note executed by an illiterate man making his mark, in certain circumstances, might require proof that it was read and explained to him. *Dawson v. Wombles*, 123 A. 340, 345, 100 S. W. 547.

A note delivered after maturity is not an overdue note, but one payable on demand. *Johnson v. Bank*, 173 Mo. 171, 73 S. W. 191.

An extension of time by a valid agreement discharges the surety. *Johnson v. Bank*, 173 Mo. 171, 73 S. W. 191.

Sec. 971. Check defined.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check. (R. S. 1909, § 10155.)

Section cited and applied. *Savings Bank v. Amer. Trust Co.*, 199 A. 491, 203 S. W. 674.

"Kiting checks" discussed and defined.—Under this section a bank check is a negotiable instrument and inland bill of exchange and imports a consideration. *Fisher v. Bagnell*, 194 A. 581, 186 S. W. 1097. In an action on a check it is sufficient to state that it was given in payment of an account stated and it is not necessary to allege how the indebtedness occurred. *Nelson v. Diffenderfer*, 178 A. 48, 163 S. W. 271.

Sec. 972. Check must be presented within reasonable time. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. (R. S. 1909, § 10156.)

Reasonable time.—Section cited and applied. *City of Brunswick v. Bank*, 194 A. 360, 190 S. W. 60. *Held*, where a city presented certified check for payment after three weeks had expired, bank should be allowed to interplead city and drawer of check.

Sec. 973. Certification equivalent to acceptance.—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. (R. S. 1909, § 10157.)

Where plaintiff, a city of the fourth class, sued on certified check, under this and other sections, *held*, that it was not necessary for plaintiff to state facts in his petition showing that the check was received within its restricted powers of contract. *City of Weston v. Bank*, 192 S. W. 126.

Sec. 974. Acceptance or certification discharges drawer and indorsers.—Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon. (R. S. 1909, § 10158.)

See notes to preceding sections.

Sec. 975. Check not an assignment of funds and bank not liable until after acceptance or certification.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. (R. S. 1909, § 10159.)

Section cited and applied. *Belgate v. Exchange Bank*, 199 A. 583, 205 S. W. 875. *Held*, a bank certifying a check at the request of the drawer, does not agree that it would pay the check at all events, but only that the amount thereof would be forthcoming when presented by one lawfully entitled thereto. Prior to the enactment of the negotiable law it was well settled that a check did not operate as an assignment pro tanto to the funds of the drawer in bank and this rule was not changed by statute. *Fisher v. Bagnell*, 194 A. 581, 186 S. W. 1097.

Sec. 976. Bank's liability for nonpayment of check.—No bank or trust company shall be liable to a depositor because of the nonpayment through mistake or error and without malice, of a check which should have been paid unless, the depositor shall allege and prove actual damages by reason of such nonpayment and in such event the liability shall not exceed the amount of damages so proved. (Laws 1919, p. 605.)

Sec. 977. Bank's liability on forged or raised check.—No bank or trust company which has paid and charged to the account of a depositor any money on a forged or raised check issued in the name of said depositor shall be liable to said depositor for the amount paid thereon unless either (1) within one year after notice to said depositor that the vouchers representing payments charged to the account of said depositor for the period during which such payment was made are ready for delivery, or (2) in case no such notice has been given, within one year after the return to said depositor of the voucher representing such payment, said depositor shall notify the bank that the check so paid is forged or raised. (Laws 1919, p. 605.)

Sec. 978. *Id.* Notice by mail.—The notice referred to in the preceding section may be given by mail to said depositor at his last known address with postage prepaid. (Laws 1919, p. 605.)

Sec. 979. Bank's liability for collections.—Any bank, banker or trust company, hereinafter called bank, organized under the laws of, or doing business in this state, receiving for collection or deposit, any check, note or other negotiable instrument drawn upon or payable at any other bank, located in another city or town, whether within or without this state, may forward such instrument for collection directly to the bank on which it is drawn or at which it is payable and the failure of such payor bank because of its insolvency or other default, to account for the proceeds thereof, shall not, render the forwarding bank liable therefor, provided, however, such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. (Laws 1919, p. 605.)

ARTICLE IV.

TERMS DEFINED.

Section 980. Definition of terms.

Sec. 980. Definition of terms.—In this chapter, unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print. (R. S. 1909, § 10160.)

Holder.—Where the payees of a note indorsed it to a bank for collection, and that bank indorsed it to another and later payees appoint plaintiff trustee to make collection, immaterial how question of right to sue was submitted to the jury, there being the presumption that the payees are the holders. *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399. Where court found that holder's possession of note was tortious, *held*, holder not entitled to instruction that his possession of note was *prima facie* evidence that it had been paid. *Brannock v. Jaynes*, 197 A. 150, 193 S. W. 51.

"Holder" defined.—*Bank v. Rosenbaum*, 191 A. 559, 177 S. W. 693.

Indorsement.—The indorsement of the name of a corporation by means of a rubber stamp *held* sufficient "written indorsement." *Trust Co. v. Range Co.*, 196 A. 206, 190 S. W. 1045.

Bearer.—"Bearer" construed and *held* third persons dealing in good faith with the person in possession of a negotiable instrument cannot be held to account by the real owner when bearer was clothed with all the *indicia* of true ownership by owner. *Miller v. Bank*, 193 A. 498, 186 S. W. 547.

ARTICLE V.

GENERAL PROVISIONS.

Sec.
981. Persons primarily and secondarily liable.
982. Reasonable time defined.
983. Paper falling due on holiday or Sunday.
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985. Law merchant to govern, when.
986. Damage on bills protested for nonacceptance or nonpayment.
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Sec.
991. Damages allowed to be in lieu of other charges, when.
992. Bill payable in money of United States, rate of exchange to be disregarded, when.
993. Bill payable in foreign currency, rate of exchange determined, how.
994. Who may bring suit—against whom brought.
995. Notarial protest evidence of demand, etc.
996. Liability of corporation, firm or co-partnership.

Sec. 981. Persons primarily and secondarily liable.—The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable. (R. S. 1909, § 10161.)

Section cited and applied. *Long v. Mason*, 273 Mo. 266, 200 S. W. 1062; *held*, accommodation makers are entitled, in an action by the payee upon a negotiable promissory note, to show that, as between them and the maker, they were sureties. By selling certain mortgaged premises the mortgagor does not release himself from his personal or primary liability on a note evidencing a mortgage debt. *Haley v. Branham*, 192 A. 125, 180 S. W. 423. This section construed in connection with Sec. 906, *supra*, *Bank v. Hanlon*, 183 A. 243, 166 S. W. 830; *held*, a reservation of right of recourse against party secondarily liable cannot be implied from acts or conduct, but must be expressly made. In an action on a promissory note against sureties, where plaintiff bank had assured sureties that it had in its possession sufficient funds of principal debtor to satisfy all the claims and extended note without consent of sureties, plaintiff was estopped from asserting defendant's liability. *Bank v. Lee*, 193 A. 537, 182 S. W. 1016. Defendants executed their note, secured by mortgage, and later sold mortgaged land without notifying purchaser of encumbrance and plaintiff bought the note and took an assignment thereof, *held*, that the release of the mortgage did not release defendants on the note. *Haley v. Branham*, 192 A. 125, 180 S. W. 423.

Sec. 982. Reasonable time defined.—In determining what is reasonable time or an unreasonable time, regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instrument, and the facts of the particular case. (R. S. 1909, § 10162.)

Where a note is indorsed after maturity it becomes a note payable on demand and demand must be made within a reasonable time. The delay of a year would be unreasonable. *Bank v. Schmidt*, 168 A. 153, 152 S. W. 101.

Sec. 983. Paper falling due on holiday or Sunday.—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. (R. S. 1909, § 10163.)

Section cited and applied. *State v. R. R. Co.*, 239 Mo. 196, 1 c. 319, 143 S. W. 785: *Heid*, the law does not ordinarily consider Sunday as *dies non*; it is never so, considered unless excepted by an express statute, because of the same rule pertaining to proceedings in court, in computing time under the statute, Sunday will be counted, unless expressly excepted.

Sec. 984. This act not retroactive.—The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the passage hereof. (R. S. 1909, § 10164.)

Section cited and applied. *Bank v. Schmidt*, 168 A. 153, 152 S. W. 101.

Sec. 985. Law merchant to govern, when.—In any case not provided for in this chapter the rules of the law merchant shall govern. (R. S. 1909, § 10165.)

Historical.—This section is the last of the sections included in the original negotiable instrument act of 1905. Cited and applied *Long v. Shafer*, 185 A. 641, 171 S. W. 690.

Sec. 986. Damage on bills protested for nonacceptance or nonpayment.—When any bill of exchange, expressed to be for

- value received, drawn or negotiated within this state, shall be duly presented for acceptance or payment, and protested for non-acceptance or nonpayment, there shall be allowed and paid to the holders by the drawer and indorsers, having due notice of the dishonor of the bill, damages in the following cases: First, if the bill shall have been drawn on any person, at any place within this state, at the rate of four per centum on the principal sum specified in the bill; second, if the bill shall have been drawn on any person, at any place out of this state, but within the United States or the territories thereof, at the rate of ten per centum on the principal sum specified in the bill; third, if the bill shall have been drawn on any person, at any port or place without the United States and their territories, at the rate of twenty per centum on the principal sum specified in the bill. (R. S. 1909, § 10166.)

Statutory damage.—Statutory damages are given only when note has been negotiated. *Hauessler v. Haberstroh*, 7 A. 458; *Bank of Missouri v. Wright*, 10 Mo. 719; *Clark v. Schneider*, 17 Mo. 295. Section cited and applied in *Riggin v. Collier*, 6 Mo. 568; *Farrell v. Fritchle*, 30 Mo. 190; *Phillips v. Evans*, 64 Mo. 17; *Taylor v. Newman*, 77 Mo. 257; *Barnes v. McMullins*, 78 Mo. 260; *Kennerly v. Bragg*, 1 A. 574. See, also, *Bank v. Lumber Co.* 121 A. 324, 98 S. W. 786.

Sec. 987. Damage on accepted bills not paid.—If any bill of exchange, expressed to be for value received, shall be drawn on any person, at any place within this state, and accepted, and payment shall not be duly made by the acceptor, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases: First, if the bill be drawn by any person at any place within this state, at the rate of four per centum on the principal sum therein specified; second, if the bill be drawn by any person at any place without this state, but within the United States or their territories, at the rate of ten per centum on the principal sum specified in the bill; third, if the bill be drawn by any person at a place without the United States and their territories, at the rate of twenty per centum on the principal sum therein specified. (R. S. 1909, § 10167.)

See notes to preceding Section.

Sec. 988. The two preceding sections construed.—The two preceding sections shall not be construed to require notice of non-acceptance or nonpayment, in any case where such notice is not required to be given at common law. (R. S. 1909, § 10168.)

See notes to Section 986.

Sec. 989. Damages, by whom recovered.—The damages herein allowed shall be recovered only by the holder of a bill, who shall have purchased the same or acquired some interest therein for a valuable consideration. (R. S. 1909, § 10169.)

See notes to Section 986.

Sec. 990. Payment made in twenty days, no damages allowed.—In cases of nonacceptance or nonpayment of a bill, drawn at any place within this state, on any person at a place within the same, no damages shall be recovered, if payment of the principal sum, with the interest and charges of protest, be paid within twenty days after demand, or notice of the dishonor of the bill. (R. S. 1909, § 10170.)

See notes to Section 986.

Sec. 991. Damages allowed to be in lieu of other charges, when.—The damages allowed by this chapter shall be in lieu of charges of protest, and other charges and expenses incurred previous to or at the time of giving notice, or at the time when the principal sum shall become payable, when no notice of the dishonor is required to be given. (R. S. 1909, § 10171.)

See notes to section 986.

Sec. 992. Bill payable in money of United States, rate of exchange to be disregarded, when.—If the contents of a bill be expressed in the money of account of the United States, the amount due and the damages thereon shall be ascertained and determined, without any reference to the rate of exchange existing between this state and the place on which the bill shall have been drawn, at the time of demand of payment or notice of the dishonor of the bill. (R. S. 1909, § 10172.)

Sec. 993. Bill payable in foreign currency, rate of exchange determined, how.—If the contents of such bill be expressed in the money of account or currency of any foreign country, then the amount due, exclusive of damages, shall be ascertained and determined by the rate of exchange or the value of such foreign currency, at the time of payment. (R. S. 1909, § 10173.)

Sec. 994. Who may bring suit—against whom brought.—The payees and indorsees of every such negotiable note payable to them or order, and the holder of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and indorsers of them, in like manner as in cases of inland bills of exchange, and not otherwise. (R. S. 1909, § 10174.)

By holder.—*Nicolay v. Fritchie*, 40 Mo. 67; *Ely v. Porter*, 58 Mo. 158.

By administrator of payee.—*Bobb v. Letcher*, 30 A. 43.

By endorsee for collection.—*Beattie v. Lett*, 28 Mo. 596.

No written assignment necessary in order to entitle holder to sue thereon in his own name. *Willard v. Moies*, 30 Mo. 142; *Boeka v. Nuella*, 28 Mo. 180.

Sec. 995. Notarial protest evidence of demand, etc.—A notarial protest is evidence of a demand and refusal to pay a bill of exchange or negotiable promissory note, at the time and in the manner stated in such protest. (R. S. 1909, § 10176.)

Certificate of protest of notary as evidence of demand. *Commercial Bank v. Barksdale*, 36 Mo. 563; *Faulkner v. Faulkner*, 73 Mo. 327; *Clough v. Holden*, 115 Mo. 336, 21 S. W. 1071; *Nelson v. Kastle*, 105 A. 79 S. W. 730; 187; *Greffett v. Dowdall*, 17 A. 280.

Objection that notary's certificate of protest is not verified by oath, as required by Sec. 5385, must be specifically made in trial court, otherwise its admission will not be reviewed on appeal. *Peoples Bank v. Scalzo*, 127 Mo. 164, 29 S. W. 1032.

As to admissibility of notary's certificate of protest in evidence, see Sec. 5385 and cases cited thereunder. See, also, *Rolla State Bank v. Pezoldt*, 95 A. 404, 69 S. W. 630.

The word "mailed," as applied to notice of protest, implies the prepayment of the requisite postage. *Rolla State Bank v. Pezoldt*, 95 A. 404, 69 S. W. 630.

For further statutory provisions relating to protest, see Secs. 938 to 946, inclusive.

Sec. 996. Liability of corporation, firm or copartnership.—If any check, draft or order of any corporation, firm or copartnership shall be given in payment of the debt of any officer, agent or employee, of said corporation, firm or copartnership, the payee or other person collecting such check, draft or order shall not be liable to said corporation, firm or copartnership therefor, unless it shall be shown that such payee or other person, at the time of collecting same, had actual knowledge that said check, draft or order was issued without authority of said corporation, firm or copartnership. (Laws 1917, p. 144.)

CHAPTER 126.

(R. S. 1919.)

ARTICLE I.

WAREHOUSES, UNIFORM WAREHOUSE RECEIPTS AND UNIFORM BILLS OF LADING.

WAREHOUSES AND WAREHOUSEMEN.

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| Sec. 13450. Warehouses and storehouses declared public warehouses. | Sec. 13458. Not to sell, etc., goods without written assent of person holding receipt. |
| 13451. License for public warehouse. | 13459. Not to give shipping receipt until goods are actually on boat, etc. |
| 13452. Public warehousemen to give bond. | 13460. Receipts, bills of lading, etc., declared negotiable. |
| 13453. Transacting business without license—penalty. | 13461. How transferred—lien created—exception. |
| 13454. Property to be sold for storage charges. | 13462. Penalty for violation of the provisions of certain sections of this chapter. |
| 13455. Warehousemen, etc., not to issue receipt until goods actually in store. | 13463. Certain sections applicable to bills of lading. |
| 13456. Not to issue any receipt for money loaned, etc., until goods actually in store. | 13464. Exceptions as to application. |
| 13457. Not to issue second receipt, when. | |

Sec. 13450. Warehouses and storehouses declared public warehouses.—All warehouses or storehouses situated in cities of over fifty thousand inhabitants, and wherein other property than grain is stored for a compensation, are declared to be public warehouses. (R. S. 1909, § 11946.)

Sec. 13451. License for public warehouse.—The proprietor, lessee or manager of any public warehouse provided for by this chapter, shall be required, before transacting any business in such warehouse, to procure from the circuit court of the county in which such warehouse is situated—or if to procure license for a

public warehouse in the city of St. Louis, application shall be made to the circuit court of said city—a license permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the clerk of said court upon written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same, or if the warehouse be owned by or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse, other than a warehouse for the storage of grain, in accordance with the laws of this state, and shall be revocable by the said court upon a summary proceeding before the court, upon the complaint of any person, in writing, setting forth the particular violation of the law, to be sustained by satisfactory proof, to be taken in such manner as may be directed by the court. (R. S. 1909, § 11947.)

In an action against a warehouseman and his sureties for conversion, where the evidence showed the location and name of the warehouse in which defendant stored plaintiff's goods to be entirely different from that mentioned in the application and bond, a joint demurrer to the evidence was properly refused, as a good cause of action was alleged and proved against defendant, if not the sureties. *State ex rel. v. Sullivan*, 99 A. 616.

Sec. 13452. Public warehousemen to give bond.—The person or persons receiving a license under the provisions of this chapter shall file with the clerk of the court granting the same, a bond to the people of the state of Missouri, with good and sufficient securities, to be approved by said court, in the penal sum of twenty-five thousand dollars, conditioned for the faithful performance of his or their duties as public warehouseman or warehousemen, and as security for the payment of all penalties and damages found and adjudged by due course of law, for violation of any clause of this chapter, and his or their full and unreserved compliance with the laws of this state in relation thereto. (R. S. 1909, § 11948.)

See note to Section 13451.

Sec. 13453. Transacting business without license—penalty. Any person or persons who shall transact within a city of over fifty thousand inhabitants the business of storing for compensation other property than grain, without first procuring license and giving a bond as herein provided, or who shall continue to transact such business after such license has been revoked, or such bond may have become void or found insufficient security for the penal sum in which it is executed, by the court approving the same (save only that he may be permitted to deliver property previously stored in such warehouse), shall be guilty of a misdemeanor, and

upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars for each and every day such business is carried on; and the court that issued may refuse to renew any license, or grant new one, to any person whose license has been revoked, within one year from the time same was revoked. (R. S. 1909, § 11949.)

Sec. 13454. Property to be sold for storage charges.—If the owner of any goods, merchandise or other property shall store the same in any warehouse created by sections 13450 to 13454, inclusive, of this chapter, and shall not pay the storage charges upon the same within a period of sixty days after said charges have become due, it shall be lawful for the warehouseman to sell such goods, merchandise or other property, or so much thereof as will pay all storage and other charges, at auction to the highest bidder, after having given either twenty day's notice by advertisement in a daily paper, or four week's notice by advertisement in a weekly paper, of the time and place of sale, and having further given notice to the owner by mailing him, at least twenty days before the day of sale, if his address is known, a notice of the time and place of sale; and if there be any surplus left after paying the storage charges, cost of advertising and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor within sixty days; and if no such demand for such surplus is made within sixty days after the time of such sale, then said surplus shall be paid into the county treasury, subject to the order of the owner. (R. S. 1909, § 11950.)

The expression "if his address was known" means if known or could be ascertained by reasonable inquiry. A warehouseman should sell no more than is reasonably necessary to pay charges and costs. If he unnecessarily sells all of the large amount of valuable and separable property, when clearly less than all would have been sufficient, he is guilty of conversion of all. A reasonable opportunity should be given prospective purchaser to examine the property. *Ward v. Transfer Co.*, 119 A. 83.

Sec. 13455. Warehouse, etc., not to issue receipt until goods actually in store.—No warehouseman, wharfinger, or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain, flour, or other produce or commodity, to any persons purporting to be the holder, owner or owners thereof, unless such goods, wares, merchandise, grain or other produce or commodity, shall have been actually received into store or upon the premises of such warehouseman, wharfinger, or other person, and shall be in the store or on the premises aforesaid and under his control at the time of issuing such receipt. (R. S. 1909, § 11951.)

The purpose of this and the following sections was to prevent the issue of false bills of lading and warehouse receipts. *State v. Kirby*, 115 Mo. 440, 446; *Aetna Nat. Bk. v. Power Co.*, 58 A. 532; *Watkins, etc., Bk. v. Ry.*, 117 A. 248, 252.

Sec. 13456. Not to issue any receipt for money loaned, etc., until goods actually in store.—No warehouseman, wharfinger, or other person, shall issue any receipt or other voucher upon goods, wares, merchandise, grain, flour, or other produce or commodity, to any person or persons for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain, flour, or other produce or commodity, shall be, at the time of issuing such receipt, in the custody of such warehouseman, wharfinger, or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher, as aforesaid. (R. S. 1909, § 11952.)

Sec. 13457. Not to issue second receipt, when.—No warehouseman, wharfinger, or other person, shall issue any second or duplicate receipt for any goods, wares, merchandise, grain, flour, or other produce or commodity, while any former receipt for any such goods, wares, merchandise, grain, flour, or other produce or commodity, as aforesaid, or any part thereof, shall be outstanding and uncanceled, without writing across the face of the same "duplicate". (R. S. 1909, § 11953.)

Sec. 13458. Not to sell, etc., goods without written assent of person holding receipt.—No warehouseman, wharfinger, or other person, shall sell or incumber, ship, transfer, or in any manner remove, or permit to be shipped, transferred or removed beyond his control, any goods, wares, merchandise, grain, flour, or other produce or commodity, for which a receipt shall be given by him, as aforesaid, whether received for storing, shipping, grinding, manufacturing, or other purpose, without the written assent of the person or persons holding such receipt. (R. S. 1909, § 11954.)

In general.—This section was intended to protect innocent holders of warehouse receipts against the transaction of prior parties. It does not apply to parties charged with notice of the infirmity of title. *Mohr v. Langan*, 77 A. 481. An indictment against a warehouseman for the sale or removal of goods stored by him must aver that he sold or removed the property without the assent of the holder of his receipt therefor. *State v. Kirby*, 115 Mo. 440. As to conversion of property by a warehouseman, see *Mohr v. Langan*, 77 A. 481; s. c. 162 Mo. 474. As to goods consigned to "shipper's orders" when order of shipper's agent is obeyed by carrier, see *Watson v. Hoosac etc. Co.*, 13 A. 263, 269.

See, also, *Union Saving Ass'n v. Elev. Co.*, 81 Mo. 341, 347.

Sec. 13459. Not to give shipping receipt until goods are actually on boat, etc.—No master, owner or agent of any boat or vessel of any description, forwarder, or officer or agent of any railroad, transfer or transportation company, or other person, shall sign or give any bill of lading, receipt or other voucher or document for any merchandise or property, by which it shall appear that such merchandise or property, has been shipped on board, of any boat, vessel, railroad car or other vehicle unless the same

shall have been actually, shipped and put on board, and shall be at the time actually on board or delivered to such boat, vessel, car or other vehicle, to be carried and conveyed as expressed in such bill of lading, receipt or other voucher or document. (R. S. 1909, § 11955.)

A bill of lading issued in violation of this statute is void. Prior equities and estoppel in transitu discussed. *Aetna Nat. Bk. v. Ry.*, 69 A. 246.

As to sufficiency of delivery to carrier, see *Aetna Nat. Bank. v. Power Co.*, 58 A. 532; *Aetna Nat. Bk. v. Ry.*, 69 A. 246.

Under this statute a carrier is prohibited from issuing bills of lading until it has actually received the freight, and a receipt of the goods after the issue of the bill of lading will not affect the rights of third parties. *Watkins Nat. Bk. v. Ry.*, 117 A. 248. The act of a carrier's general agent is the act of the carrier itself. *Smith v. Ry.*, 74 A. 48.

Sec. 13460. Receipts, bills of lading, etc., declared negotiable.—All receipts issued or given by any warehouseman, or other person or firm, and all bills of lading, transportation receipts and contracts of affreightment, issued or given by any person, boat, railroad or transportation or transfer company, for goods, wares, merchandise, grain, flour or other produce, shall be and are hereby made negotiable by written indorsement thereon, and delivery in the same manner as bills of exchange and promissory notes; and no printed or written conditions, clauses or provisions inserted in or attached to any such receipts, bills of lading or contracts, shall in any way limit negotiability or affect any negotiation thereof, nor in any manner impair the right and duties of the parties thereto, or persons interested therein; and every such condition, clause or provision purporting to limit or affect the rights, duties or liabilities created or declared in sections 13455 to 13464, inclusive, of this chapter, shall be void and of no force or effect. (R. S. 1909, § 11956.)

To determine what are such receipts as are made negotiable, this section and Sec. 13461 should be read together. A negotiable warehouse receipt is one given for goods stored or deposited. An instrument which is, in effect, an agreement to ship the goods in question, is not a warehouse receipt within the meaning of statute. *Union Savings Ass'n v. Elev. Co.*, 81 Mo. 341. A transfer of a bill of lading by endorsement and delivery for value passes to the transferee whatever title to the goods in question the transferor had at the time. *Dickson v. Elev. Co.*, 44 A. 498.

Bills of lading held to be *prima facie* negotiable, and to carry the title to the property covered by them. Drafts secured by bills of lading fully discussed. *Smith v. Banks*, 120 A. 527. As to effect of acknowledgment of notice of transfer signed in blank by the warehouseman on a warehouse receipt, see *Central Sav. Bk. v. Garrison*, 2 A. 58. As to liability of carrier where bill of lading is issued in sets in another state, see *Midland Nat. Bk. v. Ry.*, 132 Mo. 492.

Sec. 13461. How transferred—lien created—exception.—Warehouse receipts given by any warehouseman, wharfinger or other person or firm, for any goods, wares, merchandise, grain, flour or other produce or commodity, stored or deposited, and all bills of lading and transportation receipts of every kind, given by any carrier, boat, vessel, railroad, transportation or transfer

company, may be transferred by indorsement in writing thereon, and the delivery thereof so indorsed; and any and all persons to whom the same may be so transferred shall be deemed and held to be the owner of such goods, wares, merchandise, grain, flour or other produce or commodity, so far as to give validity to any pledge, lien or transfer given, made or created thereby, as on the faith thereof, and no property so stored or deposited, as specified in such bills of lading or receipts, shall be delivered, except on surrender and cancellation of such receipts and bills of lading: Provided, however, that all such receipts and bills of lading, which shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of sections 13455 to 13464, inclusive, of this chapter. (R. S. 1909, § 11957.)

In general.—This section has no application where the contract was not made nor executed in whole or in part within this state. *Alabama Nat. Bk. v. Ry.*, 42 A. 284, 292. Bills of lading may still be transferred by delivery for a valuable consideration. *Scharff v. Meyer*, 133 Mo. 428; *Midland Nat. Bk. v. Ry.*, 62 A. 531. Goods may be pledged by the delivery of the warehouse receipt, though it be not indorsed. *St. Louis etc. Bk. v. Ross*, 9 A. 399. See, also, *Fourth Nat. Bk. v. Compress Co.*, 11 A. 333. The word "non-negotiable" stamped on a bill of lading does not destroy its assignability. *Midland Nat. Bk. v. Ry.*, 62 A. 531. As to estoppel of vendor who has delivered bill of lading from claiming property or its proceeds, see *Johnson etc. Co. v. Bank*, 116 Mo. 558; *Third Nat. Bk. v. Smith*, 107 A. 178.

Sec. 13462. Penalty for violation of the provisions of certain sections of this chapter.—Any warehouseman, wharfinger, forwarder or other person who shall violate any of the provisions of sections 13455 to 13464, inclusive, of this chapter shall be deemed guilty of a criminal offense, and, upon indictment and conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary of this state not exceeding five years, or both; and all and every person or persons aggrieved by the violation of any of the provisions of said sections may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of said sections, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation, as aforesaid, before any court of competent jurisdiction, whether such person or persons shall have been convicted of fraud, as aforesaid, under said sections, or not. (R. S. 1909, § 11958.)

As to sufficiency of indictment, see *State v. Kirby*, 115 Mo. 440, cited under Sec. 13458.

Sec. 13463. Certain sections applicable to bills of lading.—All the provisions of sections 13455 to 13464, inclusive, of this chapter shall apply and be applicable to bills of lading, and to all persons or corporations, their agents or servants, that shall or

may issue bills of lading of any kind or description, the same as if the words "forwarder and bills of lading" were mentioned in each of said sections of this chapter. (R. S. 1909, § 11959.)

Sec. 13464. Exception as to application.—So much of the nine preceding sections of this chapter as forbids the delivery of property except on surrender and cancellation of the original receipt or bill of lading, or the indorsement of such delivery thereon in case of partial delivery, shall not apply to property replevied or removed by operation of law. (R. S. 1909, § 11960.)

See Central Sav. Bk. v. Garrison, 2 A. 58.

ARTICLE II.

UNIFORM WAREHOUSE RECEIPTS.

An act to make uniform the law of warehouse receipts.

Sec.	Sec.
13465. Persons who may issue receipts.	13494. Warehouseman need not deliver until lien is satisfied.
13466. Form of receipts—essential terms.	13495. Warehouseman's lien does not preclude other remedies.
13467. Form of receipts—what terms may be inserted.	13496. Satisfaction of lien by sale.
13468. Definition of nonnegotiable receipt.	13497. Perishable and hazardous goods.
13469. Definition of negotiable receipt.	13498. Other methods of enforcing liens.
13470. Duplicate receipts must be so marked.	13499. Effect of sale.
13471. Failure to mark "not negotiable."	13500. Negotiation of negotiable receipts by delivery.
13472. Obligation of warehouseman to deliver.	13501. Negotiation of negotiable receipts by indorsement.
13473. Justification of warehouseman in delivering.	13502. Transfer of receipts.
13474. Warehouseman's liability for misdelivery.	13503. Who may negotiate a receipt.
13475. Negotiable receipts must be cancelled when goods delivered.	13504. Rights of person to whom a receipt has been negotiated.
13476. Altered receipts.	13505. Rights of person to whom a receipt has been transferred.
13477. Lost or destroyed receipts.	13506. Transfer of negotiable receipt without indorsement.
13478. Effect of duplicate receipts.	13507. Warranties on sale of receipt.
13479. Warehouseman cannot set up title in himself.	13508. Indorser not a guarantor.
13480. Interpleader of adverse claimants.	13509. No warranty implied from accepting payment of a debt.
13481. Warehouseman has reasonable time to determine validity of claims.	13510. When negotiation not impaired by fraud, mistake, or duress.
13482. Adverse title is no defense except as above provided.	13511. Subsequent negotiation.
13483. Liability for nonexistence or misdescription of goods.	13512. Negotiation defeats vendor's lien.
13484. Liability for care of goods.	13513. Issue of receipt for goods not received.
13485. Goods must be kept separate.	13514. Issue of receipt containing false statement.
13486. Fungible goods may be commingled if warehouseman authorized.	13515. Issue of duplicate receipts not so marked.
13487. Liability of warehouseman to depositors of commingled goods.	13516. Issue for warehouseman's goods of receipts which do not state that fact.
13488. Attachment or levy upon goods for which a negotiable receipt has been issued.	13517. Delivery of goods without obtaining negotiable receipt.
13489. Creditor's remedies to reach negotiable receipts.	13518. Negotiation of receipt for mortgaged goods.
13490. What claims are included in the warehouseman's lien.	13519. Cases not provided for in act.
13491. Against what property the lien may be enforced.	13520. Interpretation shall give effect to purpose of uniformity.
13492. How the lien may be lost.	13521. Definitions.
13493. Negotiable receipt must state charges for which lien is claimed.	13522. Act does not apply to existing receipts.

Sec. 13465. Persons who may issue receipts.—Warehouse receipts may be issued by any warehouseman. (Laws 1911, p 432.)

Sec. 13466. Form of receipts—essential terms.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored,

(b) The date of issue of the receipt,

(c) The consecutive number of the receipt,

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,

(e) The rate of storage charges,

(f) A description of the goods or of the packages containing them,

(g) The signature of the warehouseman, which may be made by his authorized agent,

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient. A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required. (Laws 1911, p 432.)

Sec. 13467. Form of receipts—what terms may be inserted. A warehouseman may insert in a receipt, issued by him, any other terms and conditions: *Provided*, that such terms and conditions shall not

(a) Be contrary to the provisions of this act,

(b) In anywise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (Laws 1911, p. 432.)

Sec. 13468. Definition of nonnegotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt. (Laws 1911, p. 432.)

Sec. 13469. Definition of a negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a nego-

tible receipt that is nonnegotiable. Such, provision, if inserted, shall be void. (Laws 1911, p. 433.)

Sec. 13470. Duplicate receipts must be so marked.—When more than one negotiable receipt is issued for the same goods, the word “duplicate” shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. (Laws 1911, p. 433.)

Sec. 13471. Failure to mark “not negotiable.”—A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it “nonnegotiable” or “not negotiable.” In case of the warehouseman’s failure so to do, a holder of the receipt who purchased it for value, supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgements of an informal character. (Laws 1911, p. 433.)

Sec. 13472. Obligation of warehouseman to deliver.—A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

- (a) An offer to satisfy the warehouseman’s lien,
- (b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgement that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. (Laws 1911, p. 433.)

Sec. 13473. Justification of warehouseman in delivering.—A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

- (a) The person lawfully entitled to the possession of the goods, or his agent,
- (b) A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who

has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. (Laws 1911, p 433.)

Sec. 13474. Warehouseman's liability for misdelivery.—

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either:

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. (Laws 1911, p. 434.)

Sec. 13475. Negotiable receipts must be cancelled when goods delivered.—Except as provided in section 13499, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. (Laws 1911, p. 434.)

Sec. 13476. Altered receipts.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial,

(b) Authorized, or

(c) Made with (without) fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the

receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. (Laws 1911, p. 434.)

Sec. 13477. Lost or destroyed receipts.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (Laws 1911, p. 435.)

Sec. 13478. Effect of duplicate receipts.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. (Laws 1911, p. 435.)

Sec. 13479. Warehouseman can not set up title in himself. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. (Laws 1911, p. 435.)

Sec. 13480. Interpleader of adverse claimants.—If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. (Laws 1911, p. 435.)

Sec. 13481. Warehouseman has reasonable time to determine validity of claims.—If some one other than the depositor or

person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (Laws 1911, p. 435.)

Sec. 13482. Adverse title is no defense except as above provided.—Except as provided in the two preceding sections and in sections 13473 and 13499, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. (Laws 1911, p. 435.)

Sec. 13483. Liability for nonexistence or misdescription of goods.—A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipts, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. (Laws 1911, p. 436.)

Sec. 13484. Liability for care of goods.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. (Laws 1911, p. 436.)

Sec. 13485. Goods must be kept separate.—Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. (Laws 1911, p. 436.)

Sec. 13486. Fungible goods may be commingled, if warehouseman authorized.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various de-

positors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. (Laws 1911, p. 436.)

Sec. 13487. Liability of warehouseman to depositors of commingling goods.—The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. (Laws 1911, p. 436.)

Sec. 13488. Attachment or levy upon goods for which a negotiable receipt has been issued.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. (Laws 1911, p. 436.)

Sec. 13489. Creditors' remedies to reach negotiable receipts.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. (Laws 1911, p. 437.)

Sec. 13490. What claims are included in the warehouseman's lien.—Subject to the provisions of section 13493, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. (Laws 1911, p. 437.)

Sec. 13491. Against what property the lien may be enforced.—Subject to the provisions of section 13493 a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. (Laws 1911, p. 437.)

Sec. 13492. How the lien may be lost.—A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act. (Laws 1911, p. 437.)

Sec. 13493. Negotiable receipt must state charges for which lien is claimed.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such cases there shall be a lien for the charges enumerated so far as they are within the terms of section 13490, although the amount of the charges so enumerated is not stated in the receipt. (Laws 1911, p. 437.)

Sec. 13494. Warehouseman need not deliver until lien is satisfied.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. (Laws 1911, p. 437.)

Sec. 13495. Warehouseman's lien does not preclude other remedies.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. (Laws 1911, p. 437.)

Sec. 13496. Satisfaction of lien by sale.—A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place. In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. (Laws 1911, p. 438.)

Sec. 13497. Perishable and hazardous goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman

may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section. (Laws 1911, p. 439.)

Sec. 13498. Other methods of enforcing liens.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. (Laws 1911, p. 439.)

Sec. 13499. Effect of sale.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. (Laws 1911, p. 439.)

Sec. 13500. Negotiation of negotiable receipts by delivery.

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer. Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. (Laws 1911, p. 439.)

Sec. 13501. Negotiation of negotiable receipts by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in

blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner. (Laws 1911, p. 439.)

Sec. 13502. Transfer of receipts.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right. (Laws 1911, p. 440.)

Sec. 13503. Who may negotiate a receipt.—A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if the time of such entrusting the receipt is in such form that it may be negotiated by delivery. (Laws 1911, p. 440.)

Sec. 13504. Rights of person to whom a receipt has been negotiated.—A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. (Laws 1911, p. 440.)

Sec. 13505. Rights of person to whom a receipt has been transferred.—A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor the title of the goods, subject to the terms of any agreement with the transferor. If the receipt is nonnegotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferor or transferee of a nonnegotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by

the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. (Laws 1911, p. 440.)

Sec. 13506. Transfer of negotiable receipt without indorsement.—When a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (Laws 1911, p. 440.)

Sec. 13507. Warranties on sale of receipt.—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

- (a) That the receipt is genuine,
- (b) That he has a legal right to negotiate or transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and
- (d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. (Laws 1911, p. 441.)

Sec. 13508. Indorser not a guarantor.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. (Laws 1911, p. 441.)

Sec. 13509. No warranty implied from accepting payment of a debt.—A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. (Laws 1911, p. 441.)

Sec. 13510. When negotiation not impaired by fraud, mistake or duress.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. (Laws 1911, p. 441.)

Sec. 13511. Subsequent negotiation.—Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. (Laws 1911, p. 441.)

Sec. 13512. Negotiation defeats vendor's lien.—Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. (Laws 1911, p. 441.)

Sec. 13513. Issue of receipt for goods not received.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipts issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Laws 1911, p. 442.)

Sec. 13514. Issue of receipt containing false statement.—A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Laws 1911, p. 442.)

Sec. 13515. Issue of duplicate receipts not so marked.—A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate" except in the case of a lost or destroyed receipt after pro-

ceedings as provided for in section 13477, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Laws 1911, p. 442.)

Sec. 13516. Issue for warehouseman's goods of receipts which do not state that fact.—Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents or servants, who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Laws 1911, p. 442.)

Sec. 13517. Delivery of goods without obtaining negotiable receipt.—A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 13477 and 13499, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Laws 1911, p. 442.)

Sec. 13518. Negotiation of receipt for mortgaged goods.—Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Laws 1911, p. 443.)

Sec. 13519. Cases not provided for in act.—In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Laws 1911, p. 443.)

Sec. 13520. Interpretation shall give effect to purpose of uniformity.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (Laws 1911, p. 443.)

Sec. 13521. Definitions.—(1) In this act, unless the context or subject matter otherwise requires: "Action" includes counterclaim, set-off, and suit in equity. "Delivery" means voluntary transfer of possession from one person to another. "Fungible goods" means goods of which any unit is, from its nature, or by mercantile custom, treated as the equivalent of any other unit. "Goods" means chattels or merchandise in storage, or which has been or is about to be stored. "Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein. "Order" means an order by indorsement on the receipt. "Owner" does not include mortgagee or pledgee. "Person" includes a corporation or partnership or two or more persons having a joint or common interest. To "purchase" includes to take as mortgagee or as pledgee. "Purchaser" includes mortgagee and pledgee. "Receipt" means a warehouse receipt. "Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor. "Warehouseman" means a person lawfully engaged in the business of storing goods for profit. (2) A thing is done "in good faith" within the meaning of this act when it is in fact done honestly, whether it be done negligently or not. (Laws 1911, p. 443.)

Sec. 13522. Act does not apply to existing receipts.—The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act. (Laws 1911, p. 444.)

ARTICLE III.

UNIFORM BILLS OF LADING.

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| Sec. | Sec. |
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| 13524. Form of bills—essential terms. | 13543. Carrier has reasonable time to determine validity of claims. |
| 13525. Form of bills—what terms may be inserted. | 13544. Adverse title is no defense, except as above provided. |
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Sec.	Sec.
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Sec. 13523. Bills governed by this act.—Bills of lading issued by any common carrier shall be governed by this act. (Laws 1917, p. 565.)

Sec. 13524. Form of bills—essential terms.—Every bill must embody within its written or printed terms—

- (a) The date of its issue,
- (b) The name of the person from whom the goods have been received,
- (c) The place which the goods have been received,
- (d) The place to where the goods are to be transported,
- (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,
- (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section 13545, and
- (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable. A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. (Laws 1917, p. 565.)

Sec. 13525. Form of bills—what terms may be inserted.—A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

- (a) Be contrary to law or public policy, or
- (b) In anywise impair his obligation to exercise at least that degree of care in the transportation and safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (Laws 1917, p. 565.)

Sec. 13526. Definition of nonnegotiable or straight bill.—A bill in which it is stated that the goods are consigned or destined to a specified person, is a nonnegotiable or straight bill. (Laws 1917, p. 566.)

Sec. 13527. Definition of negotiable or order bill.—A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill. Any provision in such a bill that is nonnegotiable shall not affect its negotiability within the meaning of this act. (Laws 1917, p. 566.)

Sec. 13528. Negotiable bills must not be issued in sets.—Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets. If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. (Laws 1917, p. 566.)

Sec. 13529. Duplicate negotiable bills must be so marked. When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. (Laws 1917, p. 566.)

Sec. 13530. Nonnegotiable bills shall be so marked.—A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable." This section shall not apply, however, to memoranda or acknowledgments of an informal character. (Laws 1917, p. 566.)

Sec. 13531. Insertion of name of person to be notified.—The insertion in a negotiable bill of the name of the person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. (Laws 1917, p. 566.)

Sec. 13532. Acceptance of bill indicates assent to its terms. Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he received it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy. (Laws 1917, p. 566.)

Sec. 13533. Obligation of carrier to deliver.—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,

(b) An offer in good faith to surrender, properly endorsed, the bill which was issued for the goods, if the bill is negotiable and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. (Laws 1917, p. 567.)

Sec. 13534. Justification of carrier in delivering.—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a nonnegotiable bill for the goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been endorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consigned. (Laws 1917, p. 567.)

Sec. 13535. Carrier's liability for misdelivery.—Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to be a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier,

the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. (Laws 1917, p. 567.)

Sec. 13536. Negotiable bill must be cancelled when goods delivered.—Except as provided in section 13549, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill has been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. (Laws 1917, p. 568.)

Sec. 13537. Negotiable bills must be cancelled or marked when parts of goods delivered.—Except as provided in section 13549, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill has been issued and fails either—

- (a) To take up and cancel the bill, or
- (b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. (Laws 1917, p. 568.)

Sec. 13538. Altered bills.—Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted in the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. (Laws 1917, p. 568.)

Sec. 13539. Lost or destroyed bills.—Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's

reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (Laws 1917, p. 568.)

Sec. 13540. Effect of duplicate bills.—A bill upon the face of which the word “duplicate” or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. (Laws 1917, p. 568.)

Sec. 13541. Carrier cannot set up title in himself.—No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. (Laws 1917, p. 569.)

Sec. 13542. Interpleader of adverse claimants.—If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate. (Laws 1917, p. 569.)

Sec. 13543. Carrier has reasonable time to determine validity of claims.—If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (Laws 1917, p. 569.)

Sec. 13544. Adverse title is no defense, except as above provided.—Except as provided in the two preceding sections and in section 13534, no right or title of a third person unless enforced by legal process shall be defense to an action brought by the consignee of a nonnegotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. (Laws 1917, p. 569.)

Sec. 13545. Liability for nonreceipt or misdescription of goods.—If a bill of lading has been issued by a carrier or on his

behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to

- (a) The consignee named in a nonnegotiable bill, or
- (b) The holder of a negotiable bill

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind of quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill. (Laws 1917, p. 569.)

Sec. 13546. Attachment or levy upon goods for which a negotiable bill has been issued.—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiations enjoined. The carrier shall in no case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. (Laws 1917, p. 570.)

Sec. 13547. Creditor's remedies to reach negotiable bills.—A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard

to property which cannot readily be attached or levied upon by ordinary legal process. (Laws 1917, p. 570.)

Sec. 13548. Negotiable bill must state charges for which lien is claimed.—If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enuierates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. (Laws 1917, p. 570.)

Sec. 13549. Effect of sale.—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. (Laws 1917, p. 570.)

Sec. 13550. Negotiation of negotiable bills by delivery.—A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person and such persons or a subsequent indorsee of the bill has indorsed it in blank. (Laws 1917, p. 571.)

Sec. 13551. Negotiation of negotiable bills by indorsement.—A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. (Laws 1917, p. 571.)

Sec. 13552. Transfer of bills.—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A nonnegotiable bill cannot be negotiated, and the indorsement of such bill gives the transferee no additional right. (Laws 1917, p. 571.)

Sec. 13553. Who may negotiate a bill.—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or, if at the time of negotiation the bill is in such form that it may be negotiated by delivery. (Laws 1917, p. 571.)

Sec. 13554. Rights of persons to whom a bill has been negotiated.—A person to whom a negotiable bill has been duly negotiated acquires thereby.

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor has or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. (Laws 1917, p. 571.)

Sec. 13555. Rights of persons to whom a bill has been transferred.—A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferer, the title to the goods, subject to the terms of any agreement with the transferer. If the bill is nonnegotiable such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferer of the bill immediately before the notification. Prior to the notification of the carrier by the transferer or transferee of a nonnegotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferer, or by a notification to the carrier by the transferer or a subsequent purchaser from the transferer of a subsequent sale of the goods by the transferer. A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. (Laws 1917, p. 571.)

Sec. 13556. Transfer of negotiable bill without indorsement. Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferer is essential for negotiation, the transferee acquires a right against the transferer to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (Laws 1917, p. 572.)

Sec. 13557. Warranties on sale of bill.—A person who negotiates or transfers for value a bill by indorsement or delivery, in-

cluding one who assigns for value a claim secured by a bill unless a contrary intention appears, warrants—

- (a) That the bill is genuine,
- (b) That he has a legal right to transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. (Laws 1917, p. 572.)

Sec. 13558. Indorser not a guarantor.—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. (Laws 1917, p. 572.)

Sec. 13559. No warranty implied from accepting payment of a debt.—A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. (Laws 1917, p. 572.)

Sec. 13560. When negotiation not impaired by fraud, accident, mistake, duress or conversion.—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion. (Laws 1917, p. 572.)

Sec. 13561. Subsequent negotiation.—Where a person having sold, mortgaged, or pledged the goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale,

shall have the same effect as if the first purchase of the goods or bill had expressly authorized the subsequent negotiations. (Laws 1917, p. 573.)

Sec. 13562. Form of the bill as indicating rights of buyer and seller.—Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is endorsed in blank or to the buyer by the consignee named therein, one who purchased in good faith, for value, the bill of goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. (Laws 1917, p. 573.)

Sec. 13563. Demand, presentation or sight draft must be paid, but draft on more than three days' time merely accepted before buyer is entitled to accompanying bill.—Where the seller of goods draws on a buyer for the price of the goods and transmits the draft and a bill of lading for the goods and either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days

thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. (Laws 1917, p. 574.)

Sec. 13564. Negotiation defeats vendor's lien.—Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. (Laws 1917, p. 574.)

Sec. 13565. When rights and remedies under mortgages and liens are not limited.—Except as provided in section 13564, nothing in this act shall limit the rights and remedies of a mortgagee or lien-holder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of thier delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. (Laws 1917, p. 574.)

Sec. 13566. Issue of bill for goods not received.—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Laws 1917, p. 574.)

Sec. 13567. Issue of bill containing false statement.—Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction

tion shall be punished for each offense by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or by both. (Laws 1917, p. 575.)

Sec. 13568. Issue of duplicate bills not so marked.—Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 13529, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Laws 1917, p. 575.)

Sec. 13569. Negotiation of bill for mortgaged goods.—Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Laws 1917, p. 575.)

Sec. 13570. Negotiation of bill when goods are not in carrier's possession.—Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Laws 1917, p. 575.)

Sec. 13571. Inducing carrier to issue bill when goods have not been received.—Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Laws 1917, p. 575.)

Sec. 13572. Issue of nonnegotiable bill not so marked.—Any person who with intent to defraud issues or aids in issuing a

nonnegotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Laws 1917, p. 575.)

Sec. 13573. Rule for cases not provided for in this act.—In any case not provided for in this act, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern. (Laws 1917, p. 576.)

Sec. 13574. Interpretation shall give effect to purpose of uniformity.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (Laws 1917, p. 576.)

Sec. 13575. Definitions.—(1) In this act, unless the context or subject matter otherwise requires—"Action" includes counter claim, set-off and suit in equity. "Bill" means bill of lading. "Consignees" means the person named in the bill as the person to whom delivery of the goods is to be made. "Consignor" means the person named as the person from whom the goods have been received for shipment. "Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported. "Holder" of a bill means a person who has both actual possession of such bill and right or property therein. "Order" means on order by indorsement on the bill. "Owner" does not include mortgagee or pledgee. "Person" includes a corporation or partnership or two or more persons having a joint or common interest. "To purchase" includes to take as mortgagee and to take as pledgee. "Purchaser" includes mortgagee and pledgee. "Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith," within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. (Laws 1917, p. 576.)

Sec. 13576. Act does not apply to existing bills.—The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. (Laws 1917, p. 576.)

MISCELLANEOUS PROVISIONS OF THE REVISED STATUTES, 1919, AFFECTING BANKS.

HOLIDAYS.

Sec. 5848. Public holidays—Sunday provision.—The following days, namely, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, any general primary election day, any general state election day, any thanksgiving day appointed by the president of the United States or by the governor of this state, and the twenty-fifth day of December, are hereby declared and established public holidays; and when any of such holidays fall upon Sundays, the Monday next following shall be considered such holidays. (Laws 1909, p. 127.)

General application.—Holidays and Sundays are counted in computing statute time unless expressly excluded. 66 Mo. 631; 177 Mo. 69, 83; 202 Mo. 703. But Sundays are not included in four days allowed for filing motions for new trial, nor when Sunday labor law would be violated, as in publication of notices. 214 Mo. 1. As to sales continued "from day to day," see 104 Mo. 519. That the last day for filing bill of exceptions is a holiday is no excuse for failure to so file same. 205 Mo. 126. Judgment in justice's court on thanksgiving day is valid. 19 A. 41. Business not prohibited on holidays is valid, as a sale under deed of trust. 112 Mo. 171. Depositions may be taken on a holiday. 86 A. 216.

As to presentation, payment and protest of negotiable instruments, see Secs. 975 and 983. See, also, Sec. 1729, as to issuing and serving writs of attachment.

Sec. 5849. "Columbus day," a public holiday.—The 12th day of October of the present year of our Lord 1909, and the 12th day of October of each year thereafter, is hereby declared a public holiday, to be known as "Columbus day," and the same shall be recognized, classed and treated as other legal holidays under the laws of this state: *Provided*, that this section shall not be construed to affect commercial paper, the making or execution of agreements in writing, or interfere with judicial proceedings. (Laws 1909, p. 549.)

Sec. 5851. "Lincoln day," a public holiday.—The twelfth day of February of the year 1916, and the twelfth of February of each year thereafter, is hereby declared a public holiday, to be known as "Lincoln day," and the same shall be recognized, classed and treated as other legal holidays under the laws of this state: *Provided*, that this act shall not be construed to affect commercial paper, the making or execution of agreements or instruments in

writing, or to interfere with judicial proceedings. (Laws of 1915, p. 301.)

Sec. 5852. "Missouri day."—The first Monday of October of each and every year shall be known and designated as Missouri day and shall be and is hereby set apart as a day commemorative of Missouri history to be observed by the teachers and pupils of schools with the appropriate exercises. That the people of the state of Missouri, and the educational, commercial, politic, civic, religious and fraternal organizations of the state of Missouri be requested to devote some part of the day to the methodical consideration of the products of the mine, field and forest of the state and to the consideration of the achievements of the sons and daughters of Missouri in commerce, literature, statesmanship science and art, and in other departments of activity in which the state has rendered service to mankind. (Laws 1915, p. 301.)

ELECTIONS.

Sec. 5264. The days upon which the general state or county or city elections shall hereafter be held in such cities shall be holidays for all purposes whatever as regards presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, and be treated and considered as is the first day of the week, commonly called Sunday. (Laws 1911, p. 249.)

NOTE—The above section refers to cities having 300,000 inhabitants or over. See Sec. 19067, R. S. 1909.

ATTACHMENTS IN COURTS OF RECORD.

Sec. 1744. Shares of stock subject to attachment.—Shares of stock in any bank, association, joint stock company or corporation, belonging to any defendant in any writ of attachment, may be attached in the same manner as the same may be levied upon under execution. (R. S. 1909, § 2313.)

The statute applies only to shares of stock of domestic corporations. 113 Mo. 12; 198 Mo. 174, 181. But if the principal office and books are in this state, the shares of a foreign corporation may become subject to process. 47 A. 409. The fact that the shares attached were carried on the stock books in the name of another than the attachment defendant did not render the attachment unlawful. 122 Mo. 631.

EXECUTIONS AND EXEMPTIONS.

Sec. 1661. Bill of sale on bank stock, etc., to be made—effect thereof.—When any rights or shares of stock in any bank, association, joint-stock company or corporation shall be sold, the officer making such sale shall execute an instrument in writing, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares, and shall also leave with the cashier, secretary or chief clerk, or, if there be none, with any other officer of such bank, association, joint-stock company or

corporation, a copy of the execution and his return thereon; and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such company or corporation as such debtor was entitled to. (R. S. 1899, § 2230.)

This section and others relating to the sale of corporate stock under execution apply only to domestic corporations. 113 Mo. 12. This section substitutes for a transfer on the books of the company a reception by its officer of a copy of the execution. 70 Mo. 262.

ASSESSORS AND THE ASSESSMENT OF PROPERTY.

Sec. 12775. Assessment of manufacturing and business companies and stock in other corporations.—The property of manufacturing companies and other corporations named in article VII, chapter 90, and all other corporations, the taxation of which is not otherwise provided for by law, shall be assessed and taxed as such companies or corporations in their corporate names. Persons owning shares of stock in banks, or any joint-stock institution, or association doing a banking business, or any insurance company, whether of fire, marine, life, health, accident or other insurance, incorporated under or by any law of the United States or of this state, shall not be required to deliver to the assessor a list thereof, but the president or other chief officer of such corporation, institution or association shall, under oath, deliver to the assessor a list of all shares of stock held therein, and the face value thereof, the value of all real estate, if any, represented by such shares of stock, together with all reserved funds, undivided profits, premiums or earnings, and all other values belonging to such corporation, company, institution or association; and such shares, reserved funds, undivided profits, premiums or earnings, and all other values so listed to the assessor, shall be valued and assessed as other property at their true value in money, less the value of real estate, if any, represented by such shares of stock. Private bankers, brokers, money brokers and exchange dealers shall make like returns, and be assessed and taxed thereon in like manner, as hereinbefore provided. Insurance companies, or any corporations or associations doing business on the mutual plan, without capital stock, shall make like returns of the net value of all assets or value belonging thereto, which net value shall be assessed and taxed in the manner hereinbefore provided: *Provided, however,* that the license hereafter required to be paid by any such bankers, brokers and dealers, in addition to such taxes, shall not exceed one hundred dollars per annum. It is hereby made the duty of the county clerk to include in his abstract of the assessor's books required to be sent to the state auditor, valuation of all property assessed under this section; under the head of "corporate companies," and in addition thereto he shall make out from the lists delivered to the assessor as above provided, and send

the same to the state auditor to be laid before the state board of equalization, on or before the 20th day of February in each year, an abstract of the assessment of all corporations or persons doing a banking or insurance business in his county, showing the name of each bank and insurance company, the number of shares of stock and their face value, amount of reserve funds, undivided profits, premiums or earnings, and all other value, together with the assessed value thereof, also the value of real estate deducted as above provided, and the assessed value of such real estate as shown by the real estate book. (R. S. 1909, § 11357.)

Construction.—The provisions of this section providing for the assessment of banking property is constitutional. The county board of equalization has authority to increase the value of the bank's corporate stock above that returned by its cashier. 135 Mo. 309.

The provision that the president shall deliver the list of shares to the assessor was intended to provide him with authentic information as to the persons owning shares in such corporations. 42 Mo. 421. A private bank is one not incorporated and whose stock is not divided into shares. 120 Mo. 161. See, also, Sec. 11788.

Assessment of banks.—The assessment of personal taxes to be paid by a national bank must be against the stockholders in proportion to the value of their stock, and not against the bank as a corporation. 180 Mo. 717. The real estate of a bank should be assessed against the corporation, the personal property should not be assessed at all and the shares of stock should be assessed against the stockholders in their individual names, but the corporation should pay the tax assessed against the stockholders and recover it from them. 179 Mo. 424. See, also, 160 Mo. 640. Taxes should be assessed in the names of the owners of the stock, and not against the corporation or the property which the shares represent. 118 Mo. 280; 180 Mo. 717; 145 Mo. 371; 58 Mo. 295; 43 Mo. 67.

The county board of equalization has the power to increase the value of bank stock as fixed by the county assessor. 135 Mo. 309.

Assessment of corporations.—Shares of stock in manufacturing companies are not subject to taxation against the owners. 84 Mo. 214. But the tax on shares of stock in an insurance company is payable by the owners thereof, and not by the corporation. 11 A. 374.

Sec. 12777. Such taxes, how paid and recovered.—The taxes assessed on shares of stock embraced in such list shall be paid by the corporations, respectively, and they may recover from the owners of such shares the amount so paid by them, or deduct the same from the dividends accruing on such shares; and the amount so paid shall be a lien on such shares, respectively, and shall be paid before a transfer thereof can be made. (R. S. 1909, § 11359.)

See notes to Section 12775.

Sec. 12778. Penalty on chief officer of corporation.—If the president or other chief officer of any such corporation fail to comply with the provisions of this article, he shall forfeit to the state the sum of one thousand dollars, to be recovered by indictment in any court of competent jurisdiction. (R. S. 1909, § 11360.)

The fact that the officers of the bank refused to furnish the assessor with list of shareholders affords no reason for making the assessment and enforcing the tax against the property of the bank. 87 Mo. 441.

See notes to Section 12775.

CRIMINAL LAWS AFFECTING BANKS.

Sec. 2398. Burglary, second degree, continued.—Every person who shall enter and break into a banking house or bank building in which there shall be at the time any money, notes, checks, goods, wares, merchandise or other valuable things kept or deposited with intent to steal, or commit any felony therein, shall, on conviction, be adjudged guilty of burglary in the second degree. (R. S. 1909, § 4521.)

See 194 Mo. 345, 353.

Sec. 3343. Obtaining money, goods, by false pretenses.—Every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by any other false pretense, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, right of action or other valuable thing or effects whatsoever, and every person who shall, with the intent to cheat and defraud another, agree or contract with such other person or his agent, clerk or servant, for the purchase of any goods, wares, merchandise or other property whatsoever, to be paid for upon delivery, and shall in pursuance of such intent to cheat and defraud, after obtaining possession of such property, sell, transfer, secrete or dispose of the same before paying or satisfying the owner or his agent, clerk or servant therefor, shall upon conviction thereof be punished in the same manner and to the same extent as for feloniously stealing the money, property or thing so obtained. (Laws 1911, page 195.)

Representation must be to a past or existing fact, and not a promise as to something to take place in the future. 119 Mo. 425; 93 Mo. 98; 66 Mo. 168.

Offense is within the statute, though the representations contain promises as to the future, together with statements as to past or existing facts. 142 Mo. 403; 159 Mo. 230; 66 Mo. 168; 170 Mo. 346, holding evidence sufficient to bring cause within the statute.

Absurd or irrational representations, where the means are at hand to determine their truth or falsehood, not within the statute. 178 Mo. 350; 196 Mo. 136, holding evidence sufficient to bring false pretenses within the statute.

Where facts have been proved, question of intent is for jury. 95 Mo. 402.

Essential that false pretense be acted upon, and cause injury. 182 Mo. 58; 178 Mo. 350; 49 Mo. 542. See, also, 117 Mo. 641.

Section has no application to exaction of excessive taxes. 87 Mo. 583.

Bill of exchange and promissory note covered by statute. 159 Mo. 230; *Id.*, 160 Mo. 42; 1 Mo. 248.

Mere agent of purchaser who is not party to contract cannot be convicted under this section. 162 Mo. 358.

Where promises made to pay for goods at different place upon their receipt is within statute. 162 Mo. 358.

As to venue, see 109 Mo. 601; 95 Mo. 402; 80 Mo. 589.

Evidence examined and held sufficient to convict. 119 Mo. 447; 212 Mo. 73; 96 Mo. 136.

Indictment.—As to sufficiency of allegations of false pretenses, see 136 Mo. 440; 6 Mo. 395; 19 Mo. 233. Description of property secured or delivery or obtaining fit, see 170 Mo. 346; 170 Mo. 151; 159 Mo. 230; 100 Mo. 571. Charge of fraudulent procuring of signature held sufficient. 118 Mo. 227. Allegation of intent, see 32 Mo. 176; 95 Mo. 163. Must use the word "designedly." 174 Mo. 663. See also, 143 Mo. 334. Indictment held insufficient as to allegation of lack of payment. 66 Mo. 160.

Fraudulently securing a signature to deed is covered by Sec. 4542, 118 Mo. 227.

As to securing signature to note, see 75 Mo. 171.

Sec. 3350. Fraudulent acts of agents of corporations.—

Every officer or agent of any incorporated company or corporation formed or existing under or by virtue of the laws of any of the United States, who shall within this state wilfully and designedly sign or procure to be signed, with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or shall wilfully and designedly issue, sell or pledge, or cause to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company or corporation, or any false or fraudulent bond or evidence of debt of such incorporated company or corporation, or any certificate or other evidence of the ownership or transfer of any share or shares in such incorporated company or corporation, or any instrument purporting to be a certificate or other evidence of ownership or transfer of such share or shares, or purporting to be such bond or evidence of debt, the signing, issuing, selling or pledging of which shall not be authorized by the charter and by-laws of such incorporated company or corporation, or some amendment thereof, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisonment in the state prison for a term of not less than three nor more than seven years. (R. S. 1909, § 4572.)

Sec. 3351. Fraudulent issue of stock.—Every officer or agent of every incorporated company, joint-stock company or corporation formed or existing under or by virtue of the laws of any of the United States, who shall, within this state, knowingly, wilfully and designedly sign or procure to be signed, with intent to issue or pledge, or cause to be issued, sold or pledged, or who shall wilfully, knowingly and designedly issue, sell or pledge, or cause to be issued, sold or pledged, any certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company, joint-stock company or corporation, or any bond or evidence of debt of such incorporated company, joint-stock company or corporation, or any instrument purporting to be a certificate or other evidence of ownership

or transfer of such share or shares, or purporting to be such bond or evidence of debt, without being thereunto first authorized and empowered by such incorporated company, joint-stock company or corporation, and every such officer and agent who shall reissue, sell, pledge or dispose of any surrendered or canceled certificate or other evidence of the ownership or transfer of any such share or shares, or of any right or interest therein, with the intent of defrauding any such corporation or any person or persons, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisoned in the penitentiary not less than three nor more than seven years. (R. S. 1909, § 4573.)

Sec. 3358. Fraud by commission merchants, banks, etc.—

If any commission merchant, agent or other person storing or shipping any grain, flour or other produce or commodity, or any cattle, horses, mules, sheep or hogs, or any other thing, or any person to whom any such property is consigned, and who shall come in possession of a bill of lading or warehouse receipt for such property, for or on account of another person or other persons, shall hypothecate, negotiate or pledge such bill of lading or warehouse receipt without the written authority therefor of the owner or consignor of such property; or if, having so disposed of any such bill of lading or warehouse receipt, shall fail to account for and pay over the proceeds thereof forthwith to his principal or the owner of such property, in either or any of such cases he shall be adjudged guilty of fraud, and shall, on conviction, be punished by fine not exceeding five thousand dollars, or by imprisonment in the penitentiary for a term not exceeding five years, or by both such fine and imprisonment: *Provided*, that nothing herein shall be construed to prevent such consignee or other person lawfully possessed of such bill of lading or warehouse receipt from pledging the same to the extent of raising sufficient means thereby to pay charges for storage and shipment, or advances drawn for on such property by the owner or consignor thereof; and a draft or order by such owner or consignor for advances shall be held and taken to be "written authority" within the meaning of this section, for the hypothecation of such bill of lading or warehouse receipt, to the extent, and only to the extent, of raising the means to meet such draft and to pay such freights and storage. (R. S. 1909, § 4581.)

Sec. 3365. Bank officer receiving deposits, when a felony.—

If any president, director, manager, cashier or other officer of any banking institution, or the owner, agent or manager of any private bank or banking institution, or the president, vice-president, secretary, treasurer, director or agent of any trust company or insti-

tution doing business in this state, shall receive or assent to the reception of any deposit of money or other valuable thing in such bank or banking institution or trust company or institution, or if any such officer, owner or agent of such bank or banking institution, or if any president, vice-president, secretary, treasurer, director or agent of such trust company or institution, shall create or assent to the creation of any debts or indebtedness, in consideration or by reason of which indebtedness any money or valuable property shall be received into such bank or banking institution or trust company or institution, after he shall have had knowledge of the fact that such banking institution or trust company or institution, or the owner or owners of any such private bank, is insolvent or in failing circumstances, he shall be deemed guilty of larceny, and upon conviction thereof shall be punished in the manner and to the same extent as is provided by law for stealing the same amount of money deposited, or valuable thing: *Provided*, that the failure of any such bank or banking institution or trust company or institution shall be *prima facie* evidence of knowledge on the part of any such officer or person that the same was insolvent or in failing circumstances when the money or property was received on deposit. (R. S. 1909, § 4586.)

Section constitutional. 152 Mo. 522; 131 Mo. 464.

Fact that owner of private bank, on account of failure to comply with the law, is doing an unauthorized business, is no defense. 108 Mo. 622; *Id.*, 120 Mo. 479.

Receiving separate deposits from different persons constitutes separate offenses. 146 Mo. 207.

As to what creates an indebtedness within meaning of section, see 131 Mo. 464.

As to the assent by defendant to the reception of deposits by an employee, see 131 Mo. 464.

Provision making subsequent failure of bank *prima facie* evidence of knowledge of insolvency is constitutional. 120 Mo. 479. Such evidence makes *prima facie* case unless rebutted. 216 Mo. 466; 152 Mo. 522. See, also, 146 Mo. 207.

Check drawn in favor of prosecuting witness on another bank and deposited with defendant's bank to his credit is a deposit. 216 Mo. 466.

Not necessary that owners of private bank be insolvent to constitute offense. 216 Mo. 466.

Financial panic at time of receipt of deposit will not excuse defendant. 146 Mo. 207.

As to sufficiency of allegation of receipt of deposit, see 131 Mo. 464; 134 Mo. 238

Sec. 3370. To prevent persons advertising as bankers.—

Any person, association of persons, company or corporation not engaged in the business of banking under the laws of the United States or of the State of Missouri, using the words "bank, banker, bankers or banking" to designate his or their business on a painted or printed sign at his or their place of business, or in a newspaper or any other kind of advertisement, or in a letterhead, or on an envelope used by him or them, shall be deemed guilty of misdemeanor, and upon conviction fined not less than one hundred dollars. (R. S. 1909, § 4587.)

Sec. 3427. Counterfeiting coin, second degree.—Every person who shall counterfeit, or cause or procure to be counterfeited, any gold or silver coin, at the time current within this state by law or usage, or in actual use or circulation within the state, or shall make or cause to be made any false or counterfeit coin, in imitation or similitude of any gold or silver coin so current or in actual use or circulation within this state, shall, if such offense be not punishable by the laws of the United States, on conviction, be adjudged guilty of forgery in the second degree. (R. S. 1909, § 4642.)

Genuine coin must be current at time counterfeit is made. 7 Mo. 177.

As to validity of acts covered by Federal statutes, see 44 Mo. 181.

Sec. 3428. Forgery of bills, notes, etc., second degree.—Every person who shall forge or counterfeit, or falsely make or alter, or cause or procure to be forged, counterfeited or falsely made or altered: First, any promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt, being or purporting to be made or issued by any bank incorporated under the laws of this state, or of any other state, territory, government or country; or, second, any order or check being or purporting to be drawn on any such incorporated bank, or any cashier thereof, by any other person, company or corporation shall, upon conviction, be adjudged guilty of forgery in the second degree. (R. S. 1909, § 4643.)

Offense here provided for is distinct from that under Sec. 3429. 152 Mo. 115.

As to descriptixn of note or check in indictment, see 75 Mo. 382; 86 Mo. 33; 157 Mo. 83.

Indictment must charge that act was done feloniously. 219 Mo. 721.

As to allegation of alteration, see 166 Mo. 575.

As to sufficiency of verdict, see 7 Mo. 177.

Sec. 3429. Uttering forged notes, etc., second degree.—Every person who shall, exchange or deliver, or offer to sell, exchange or deliver, or receive upon a sale, exchange or delivery for any consideration, any falsely-made, altered, forged, or counterfeited note, check, bill, draft or other instrument, the falsely making, altering, forging or counterfeiting of which is by the last section declared to be an offense, knowing the same to be falsely made, altered, forged or counterfeited, with intent to have the same altered or passed, shall be adjudged guilty of forgery in the second degree. (R. S. 1909, § 4644.)

Section intended to cover forgery of bank note. 44 Mo. 181. Not necessary that genuine bank notes of denomination forged have been issued. 30 Mo. 236. Offense provided for in this section is a distinct offense from that provided for under Sec. 3428, and an acquittal under one is no bar to the other. 152 Mo. 115. Evidence of sale held sufficient. 171 Mo. 562; 30 Mo. 236. Evidence of offer of sale held insufficient. 167 Mo. 366.

As to sufficiency of evidence of criminal intent, see 116 Mo. 505. Allegations in indictment held sufficient. 65 Mo. 116. As to allegations of sale and delivery, see 167 Mo. 366; 130 Mo. 468; 117 Mo. 181.

Sec. 3430. Possession of forged note with fraudulent intent, second degree.—Every person who shall bring into this state, or have in his possession or custody any such falsely-made, altered, forged or counterfeited note, bill, check, draft or other instrument, knowing the same to be falsely made, altered, forged or counterfeited, with the intent to utter, pass, sell or exchange the same as true or false, or to cause the same to be passed, uttered, sold or exchanged with intent to defraud, shall, on conviction, be adjudged guilty of forgery in the second degree. (R. S. 1909, § 4645.)

Not necessary that defendant affixed the forged signature to check. 148 Mo. 206; 116 Mo. 548. Or that he indorsed check. 91 Mo. 662.

Not necessary that forged check be uttered for a consideration. 166 Mo. 575.

Indictment must allege that defendant knew the instrument was forged and that he intended to defraud. 167 Mo. 366.

Indictment held sufficient as to description of check. 91 Mo. 662.

Sec. 3431. Making false plate of check of bank, second degree.—Every person who shall either: First, make or engrave, or cause or procure to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft or order, check, certificate of deposit or other evidence of debt issued by any incorporated bank in this state, or of any state or territory, or under the laws of any foreign country or government, without authority of such bank; or second, have or keep in his custody or possession any such plate without the authority of such bank, with the intent of using or having the same used for the purpose of taking therefrom any impression to be passed, sold or uttered; or third, make or cause to be made, or have or keep in his custody or possession, any plate upon which shall be engraved any figures or words intended for or adapted to or which may be used for the purpose of falsely altering any evidence of debt issued by any such incorporated bank, with the intent of using or having the same used for that purpose; or fourth, make or cause to be made, or have or keep in his custody or possession, without the authority of such bank, any impression taken from any such plate, with the intent to fill up and complete, or to have the same filled up and completed or sold, passed or returned, shall, upon conviction, be adjudged guilty of forgery in the second degree. (R. S. 1909, § 4646.)

Sec. 3432. False plate under preceding section.—Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument in either of the following cases: First, when the engraving on such plate or any impression therefrom resembles and conforms to such parts of the genuine instrument as are engraved; or second, where such plate shall be partly finished, and the parts so finished or any impression there-

from resembles and conforms to similar parts of the genuine instrument. (R. S. 1909, § 4647.)

Sec. 3433. Fraudulent possession of counterfeit coin, third degree.—Every person who shall bring into this state or have in his custody or possession any counterfeit or imitation of any gold or silver coin, the counterfeiting of which is hereinbefore declared to be an offense, knowing the same to be counterfeited, with intent to defraud or injure by uttering the same as true or false, or by causing the same to be uttered, shall, if such offense be not punishable by the laws of the United States, upon conviction, be adjudged guilty of forgery in the third degree. (R. S. 1909, § 4648.)

Sec. 3434. Passing counterfeit coin, third degree.—Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, or receive upon any sale, exchange or delivery, any such counterfeit or imitation of any gold or silver coin, specified in the last section, knowing the same to be counterfeited, with intent to have same uttered or passed, shall be adjudged guilty of forgery in the third degree, unless the offense charged shall be made punishable by the laws of the United States. (R. S. 1909, § 4649.)

Sec. 3438. False entries in books of corporations, third degree.—Every person who, with intent to defraud, shall make any false entries, or shall falsely alter any entry made in any book of accounts kept by any monied corporation within this state, or in any such book of accounts kept by any such corporation, or its officers, and delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim or credit shall be or shall purport to be created, increased, diminished or discharged, or in any manner affected, shall, upon conviction, be adjudged guilty of forgery in the third degree. (R. S. 1909, § 4653.)

Sec. 3439. Uttering forged instrument, fourth degree.—Every person who shall have in his possession, buy or receive any falsely made, altered, forged or counterfeited instrument or writing, the forgery of which is hereinbefore declared to be an offense, except such as are enumerated in section 3428, knowing the same to be forged, counterfeited, or falsely made or altered, with intent to injure or defraud, by uttering the same as true or false, or causing the same to be so uttered, shall upon conviction be adjudged guilty of forgery in the fourth degree. (R. S. 1909, § 4654.)

Actual uttering not necessary to constitute offense if forged instrument is held with guilty intent to utter. 166 Mo. 229; 146 Mo. 195. Unexplained possession is not sufficient without other evidence to show possession with knowledge of instrument's false character and for unlawful purpose. 166 Mo. 229.

Sec. 3440. Selling forged instrument to have the same passed, fourth degree.—Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, for any consideration, any falsely altered, forged or counterfeit instrument or writing, the forgery of which is declared punishable, except as in the last section is excepted, knowing the same to be forged, counterfeited or falsely-altered, with the intention to have the same uttered or passed, shall, upon conviction, be adjudged guilty of forgery in the fourth degree. (R. S. 1909, § 4655.)

See cases cited under Sec. 3429, and 146 Mo. 195. Indictment held sufficient. 152 Mo. 87.

Sec. 3441. Uttering forged instrument.—Every person who, with intent to defraud, shall pass, utter or publish, or offer or attempt to pass, utter or publish as true, any forged, counterfeited or falsely-altered instrument or writing, or any counterfeit or any imitation of any gold or silver coin, the altering, forging or counterfeiting of which is hereinbefore declared to be an offense, knowing such instrument, writing or coin to be altered, forged or counterfeited, shall, upon conviction, be adjudged guilty of forgery in the same degree as hereinbefore declared for the forging, altering or counterfeiting the instrument, writing or coin so passed, uttered or published, or offered or attempted to be passed, uttered or published. (R. S. 1909, § 4656.)

Fact that defendant might have been convicted under Sec. 3439 will not prevent conviction under this section. 146 Mo. 195. "Utter," as used in this section, defined. 48 Mo. 520. Not essential to offense that something of value be obtained by uttering of forged instrument. 78 Mo. 49.

As to sufficiency of allegations of "passing" and "uttering," see 146 Mo. 195; 144 Mo. 68; 65 Mo. 115. "Forged" and "counterfeited" defined. 9 Mo. 855. Section applies to passing counterfeit United States treasury note. 44 Mo. 181. As to form and sufficiency of description of forged instrument in the indictment, see 142 Mo. 507; 90 Mo. 156. Form of verdict held sufficient. 7 Mo. 177.

Sec. 3552. Cheats, frauds, bogus checks, etc.—Every person who, with intent to cheat and defraud, shall obtain or attempt to obtain from any other person or persons any money, property or valuable thing whatever, by means or by use of any trick or deception, or false and fraudulent representation, or statement or pretense, or by any other means or instrument or device, commonly called "the confidence game," or by means or by use of any false or bogus check, or by any other written or printed or engraved instrument, or spurious coin or metal, shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding seven years. (Laws 1909, p. 444.)

Section not applicable where property was obtained by trespass. 186 Mo. 108. Has been held to cover false statements of defendant as to agency for third person. 88 Mo. 604. Where false representations are too absurd to induce belief in their reasonableness, held no offense. 117 Mo. 641. See, also, 178 Mo. 350. And con-

tra, 12 A. 415. Indictment should describe the trick of false pretense. 174 Mo. 663. And state to whom pretense was made. 148 Mo. 143.

As to alleging the different devices relied on, see 71 Mo. 460; 75 Mo. 171. Intent to cheat and defraud necessary under this section. 156 Mo. 143; 112 Mo. 585; 76 Mo. 180. To show intent, evidence of similar acts admissible. 82 Mo. 558; 88 Mo. 604. See, also, 92 Mo. 490.

As to allegations of intent, see 156 Mo. 143; 95 Mo. 163.

The obtaining of property.—A note is a valuable thing under this section. 75 Mo. 171. Fact that injured party recovered money after the taking by defendant will not relieve defendant. 85 Mo. 256.

Conviction under this section for collecting taxes in excess of what was due is invalid. 87 Mo. 583.

Can be no conviction for obtaining or attempting to obtain a school warrant from school directors who had no authority to issue same. 178 Mo. 350. Nor a void power of attorney from a married woman. 100 Mo. 571.

Necessary that victim surrender property by reason of trick or false pretense. 174 Mo. 663; 117 Mo. 641; 109 Mo. 242.

Crime of obtaining money by false pretense not complete until property is actually obtained. 89 Mo. 271. As to attempting to obtain property by false pretenses, see 156 Mo. 143; 109 Mo. 601.

Can be no conviction under an indictment charging an attempt where evidence shows property was obtained. 178 Mo. 350. As to allegations of property obtained, manner of obtaining, etc., see 174 Mo. 663; 156 Mo. 143; 109 Mo. 601; 100 Mo. 571; 95 Mo. 163; 82 Mo. 458. As to venue, see 109 Mo. 601; 95 Mo. 402. Offense is a felony and punishable by imprisonment in penitentiary. 118 A. 60; 75 Mo. 171. Section held to be constitutional. 77 Mo. 310. Where indictment is drawn under this section, punishment should be under same. 92 Mo. 490.

Sec. 9801. Penalty for making false affidavit or affirmation.

Every person who shall wilfully, corruptly and falsely, before any officer of this state having a seal, under oath or affirmation voluntarily make any false affidavit or statement of any nature concerning any corporation, or any proposed corporation, shall be deemed guilty of a felony, and shall upon conviction be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year. (Laws 1911, p. 151.)

Sec. 3366. Making statement derogatory to any bank, etc., penalty.—Any person who shall make, utter, circulate or transmit to another or others any statement, untrue in fact, derogatory to the financial condition of any bank, banking house, banking company, trust company, surety company, guarantee company, title insurance company or other financial institution in this commonwealth with intent to injure any such financial institution, or who shall counsel, aid, procure or induce another to originate, make, utter, transmit or circulate any such statement or rumor with like intent, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed \$1,000.00 or imprisoned in the county jail for a period not exceeding one year or by both such fine and imprisonment. (Laws 1911, p. 196.)

Sec. 3367. Prohibiting the making or use of false statements to obtain property or credit, or for the extension of credit or discount.—No person shall knowingly make or cause to be made,

either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange, or promissory note, for the benefit of either himself or of such person, firm or corporation; nor shall any person knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation, in which he is interested, or for whom he is acting, procure, upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned hereinabove; nor shall any person knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay of himself or such person, firm or corporation, in which he is interested, or for whom he is acting, represent, on a later day, that such statement theretofore made, if then again made on said day, would be then true, when in fact, said statement if then made would be false, and procure upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned hereinabove. (Laws 1911, p. 196.)

Sec. 3368. Penalty.—Any person, firm or corporation who shall violate any of the provisions of this act shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not exceeding five years, or by imprisonment in the county jail not exceeding twelve months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. (Laws 1911, p. 196.)

FORMS.

FORM FOR INCORPORATING BANKS OF DEPOSIT AND DISCOUNT.

[Form No. 1.]

Know all men by these presents:

That we, the undersigned, desirous of forming a corporation under the laws of the State of Missouri for the establishment of a bank of deposit and discount, have entered into the following agreement:

First—That the name of this corporation shall be _____.

Second—That the bank shall be located at _____ of _____, county of _____ Missouri.

Third—That the amount of the capital stock of the bank shall be _____, divided into _____ shares of the par value of _____ dollars each; that the same has been bona fide subscribed and _____ actually paid up in lawful money of the United States and is in the custody of the persons hereinafter named as the first board of directors.

Fourth—That the names and places of residence of the several shareholders and the number of shares subscribed by each are as follows:

Name.	Residence.	Number of Shares.
.....
.....
.....

Fifth—That the board of directors shall consist of _____ shareholders, and the following persons have been agreed upon for the first year: _____, _____, _____.

Sixth—The corporation shall continue for _____.

Seventh—The purposes for which this corporation is formed are to have and exercise all rights and powers mentioned in subdivisions 1, 2, 3, 4, 5, 6 and 7 in sec. 11737, art. 2, chap. 108, R. S 1819, laws, or any amendments thereto. (See Sec. 11737.)

IN TESTIMONY WHEREOF, we have hereunto, this _____ day of _____, 19____, set our hands.

State of Missouri,

County of _____.

} ss.

On this _____ day of _____, 19____, before me personally appeared _____ (names of all the stockholders) to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year above mentioned. My commission expires _____, 19____.
(Seal) _____, Notary Public.

Instructions—When the articles are signed and acknowledged by ALL the stockholders they must be recorded in the office of the recorder of deeds of the county in which the corporation is located, and a certified copy thereof filed in the office of the Bank Commissioner with the statutory tax and fee of \$53.00 on the first \$50,000 or less of capital, and \$5.00 on each additional \$10,000 of capital.

NOTE—The name shall not be that of any corporation hitherto incorporated in this state for similar purposes. The number of incorporators shall not be less than five. The capital stock shall not be less than \$10,000 in places of three thousand population and under, not less than \$25,000 in towns the population of which is over three yet does not exceed fifteen thousand; \$50,000 capital in places where the population exceeds fifteen thousand and does not exceed twenty-five thousand; \$100,000 capital if the place exceeds twenty-five thousand population. The number of directors shall not be less than five, nor more than thirty, all of whom shall be citizens of the United States, and three-fourths of whom shall be residents of Missouri and each a bona fide owner of at least two shares of the capital stock of the bank if the capital is less than \$25,000, and five shares if the capital of the bank is \$25,000 or over.

The Articles of Agreement may designate the number of directors necessary to constitute a quorum and may provide for the number of years the corporation is to continue, which shall not exceed fifty years, or may provide that the existence of the corporation shall continue until the corporation shall be dissolved by consent of the stockholders or by proceedings instituted by the state under any statute now in force or hereafter enacted.

CERTIFICATE OF INCREASE OF CAPITAL STOCK OF A BANK.

[Form No. 2.]

We, the undersigned, _____ president, and _____ secretary of _____ of the city of _____, State of Missouri, hereby certify that at a meeting of the stockholders of said bank, held on the _____ day of _____ 19____, pursuant to notice printed once a week in the _____, published in the city _____, the first insertion of which notice was not less than sixty days, and the last not less than one nor more than five days previous to the day on which such meeting was held, a proposition was duly submitted to increase the capital stock of said _____ bank from \$_____ to \$_____; that upon said proposition the consent of the persons holding the larger amount in value of the stock of said _____ bank was given, viz.: _____ votes in favor of and _____ against it; and that, therefore, the capital stock of said _____ bank is hereby increased from \$_____ to \$_____, and that the full amount of said increase is bona fide subscribed and paid up in cash to the board of directors of said bank.

_____, President.

Attest:

_____, Secretary.

_____, President, being duly sworn, says that the matters and things set forth in the foregoing statement are true.

_____, President.

Subscribed and sworn to before me, this _____ day of _____, 19____. My commission expires _____ 19____.

_____, Notary Public.

State of Missouri, }
County of _____, } ss.

On this _____ day of _____, 19____, before me personally appeared _____ (president) to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written. My commission expires _____, 19____.

(Seal)

_____, Notary.

Instructions—Must be recorded in the office of recorder of deeds, and a certified copy thereof filed in the office of the Bank Commissioner. The tax is \$5.00 on each \$10,000, or less of increase, and fee of \$1.25 for certificate.

Sixth—The corporation shall continue for ____.

Seventh—That the purposes for which this corporation is formed are, as follows (See Sec. 11799):

IN TESTIMONY WHEREOF, we have hereunto set our hands, this _____ day of _____ 19—.

State of Missouri,

County of _____.

ss.

On this _____ day of _____, 19—, before me personally appeared _____ (names of all subscribers to the stock), to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year above written. My commission expires _____, 19—.

(Seal)

_____, Notary Public.

Instructions—Must be recorded in the office of recorder of deeds of the county in which the corporation is located, and a certified copy thereof filed in the office of the Bank Commissioner. State tax on a capital of \$50,000 will be \$50.00, and fee for certificate \$3.00; \$5.00 tax on each additional \$10,000 of capital.

NOTE—The name shall not be that of any corporation hitherto incorporated in this state for similar purposes. The number of incorporators shall not be less than five. The capital stock shall be not less than \$50,000 in places with a population of twenty-five thousand and under; \$100,000 in places exceeding twenty-five thousand population and under one hundred thousand, and \$200,000 in places with a population exceeding one hundred thousand.

The number of directors shall not be less than five, nor more than thirty, all of whom shall be citizens of the United States, and three-fourths of whom shall be residents of Missouri and each a bona fide owner of at least five shares of the capital stock of the company.

The Articles of Agreement may designate the number of directors necessary to constitute a quorum and may provide for the number of years the corporation is to continue, which shall not exceed fifty years, or may provide that the existence of the corporation shall continue until the corporation shall be dissolved by consent of the stockholders or by proceedings instituted by the state under any statute now in force or hereafter enacted.

FORM FOR INCREASE OR DECREASE OF CAPITAL STOCK OF A TRUST COMPANY.

[Form No. 5.]

Be it known, that on the _____ day of _____, 19—, a meeting of the stockholders of the _____, a corporation under the laws of Missouri, was held at the city of _____, county of _____, State of Missouri, for the purpose of _____ the capital stock of said company, pursuant to notice signed by a majority of the directors of said company, duly published at least once a week in the _____, a newspaper published in the city of _____, such notice having been published for more than sixty days next prior to said date, the first insertion being on the _____ day of _____, 19—, and the last insertion on the _____ day of _____, 19—.

That a copy of said notice, postage prepaid, was deposited in the postoffice in the city of _____, Missouri, addressed to each stockholder at his usual place of residence at least sixty days previous to the day fixed for said meeting.

That at said meeting there were present, in person or by proxy, stockholders representing not less than a majority of all the shares of stock of the corporation. To wit, _____ shares thereof.

That said meeting was organized by choosing _____, a director in said company, chairman, and _____, secretary thereof.

That a proposition was then and there submitted to — the capital stock of said company from \$ — to \$ —.

And upon canvassing the vote thereon it appeared that persons holding the larger amount in value of all of the shares of stock of the corporation had voted in favor of such —. Viz.: — votes in favor and — votes against. The amount of the assets of said company, paid up, is — dollars. The amount of its liabilities is — dollars, and the amount to which the capital stock of said company is — is — dollars,* and that all of the said increase of capital stock is paid up in actual cash and is now in the hands of the board of directors of said company for the purposes herein set forth.

Countersigned:

— Secretary. —, Chairman.
— chairman, being duly sworn, says the matters and things set forth in the foregoing statement are true.

Subscribed and sworn to before me, this — day of —, 19—. My commission expires —, 19—. —, Chairman.

—, Notary Public.

State of Missouri, }
County of —, } ss.

On this — day of —, 19—, before me personally appeared — (name of chairman), to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year above mentioned. My commission expires —, 19—. (Seal) —, Notary Public.

*Omit the following sentence when the capital is decreased: The State's fee for certificate of decrease of capital stock will be \$1.25.

N. B.—The statement must be sworn to by the chairman, and also acknowledged by the chairman before a proper officer, and then recorded in the office of the recorder of deeds, and a certified copy from the recorder filed in the office of the Bank Commissioner, with State tax and fee as follows. Tax \$5.00 on each \$10,000 of increase or the fraction thereof, and \$1.25 for certificate. Copy of publication, with statement of publisher showing dates of insertions, should accompany the certificate.

STATEMENT EXTENDING BUSINESS PURPOSES OF A TRUST COMPANY.

[Form No. 6.]

Be it known that on the — day of —, 19—, a meeting of the stockholders of the — was held at the city of —, county of —, State of Missouri, for the purpose of amending the articles of association of said company, and extending its business purposes, pursuant to notice signed by a majority of the directors of said company, duly published in the —, a — newspaper published in the city of — for more than sixty days prior to said date, the first insertion of said notice being on the — day of —, 19—, and the last insertion on the — day of —, 19—.

That a copy of said notice, postage prepaid, was deposited in the postoffice in the city of —, Missouri, addressed to each stockholder, at his usual place of residence, at least sixty days previous to the day fixed for said meeting.

That said meeting was organized by choosing —, a director in said company, chairman, and —, secretary thereof.

That at said meeting there were present, in person or by proxy, stockholders holding the larger amount in value of all the shares of stock of said company.

A proposition was then and there submitted to amend section seven of the articles of association of said company and extend its business to include the following purposes: (set out fully the language of the amendment.) (Sec. 11799.)

And upon canvassing the vote thereon it appeared that a majority of the stock of said company had been voted in favor of such amendment.

_____, Chairman.

Attest:

_____, Secretary.

_____, chairman, being duly sworn, says the matters and things set forth in the foregoing statement are true.

_____, Chairman.

Subscribed and sworn to before me this _____ day of _____, 19____. My commission expires _____, 19____.

(Seal)

_____, Notary Public.

State of Missouri,

County of _____.

} ss.

On this _____ day of _____, 19____, before me personally appeared _____, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal the day and date last aforesaid. My commission expires _____, 19____.

(Seal)

_____, Notary Public.

NOTE—This statement must be sworn to by the chairmen, and also acknowledged by the chairman before a proper officer, and then recorded in the office of the recorder of deeds, and a certified copy from the recorder filed with the Bank Commissioner. State's fee for certificate, \$1.50.

NOTICE OF STOCKHOLDERS' MEETING.

[Form No. 7.]

Notice is hereby given that the _____ annual stockholders' meeting of the _____ will be held at its banking house in the city of _____, Missouri, on the _____ day of _____, 19____.

Said meeting will be convened at 9 o'clock a. m. and continued during at least three hours, unless the object for which such meeting is called be accomplished sooner.

The purpose for which this meeting is called is to elect _____ directors for the said bank, to serve during the ensuing year, (a) and for the transaction of any other business which may properly come before the meeting.

_____, President.

Attest:

_____, Secretary.

NOTE—If any special business, (other than the ordinary business of such meeting) is to be considered at such meeting state the nature thereof at (a) in the above notice.

ANNUAL MEETING OF SHAREHOLDERS.

[Form No. 8.]

Shareholders of the _____ bank of _____, Missouri, convened at the office of the bank at 9 o'clock a. m., pursuant to notice having been published in the _____, a (daily or weekly) newspaper, published in _____, Missouri, for the purpose of holding an election of directors for the ensuing year. _____ was elected chairman and _____, secretary. On motion a certified copy of the notice of election and affidavit of publisher was read and ordered spread upon the minutes of the meeting (paste in notice and affidavit) (or copy of written notice served). The inspectors of election _____ and _____, being shareholders, who are not directors, and having been previously appointed by the president of the bank, took and subscribed the following oath:

"I do solemnly swear that I will execute the duties of an inspector of the election now to be held with strict impartiality and according to the best of my ability."

Subscribed and sworn to before me this _____ day of _____, 19____.

(Seal)

_____, Notary Public.

On motion the inspectors were instructed to open the polls, receive and canvass the votes and certify the result of the election to the president of the board of directors.

There being no further business, the meeting adjourned.

Attest:

_____, Secretary.

_____, Chairman.

MEETING OF OLD BOARD OF DIRECTORS.

[Form No. 9.]

(To be held within two weeks after annual election) _____, 19—.

The board of directors of the _____ bank of _____ met at the office of the bank. Present, (here insert names of all present). The minutes of the preceding meeting were read and approved. The president laid before the meeting the result of the annual election of directors held _____, 19—, duly certified by the inspectors of election, as follows:

This is to certify that we, the undersigned, _____ and _____, having been appointed inspectors of the election for directors of the _____ bank of _____, held at the office of the said bank this day, and having received and canvassed the vote, beg leave to report as follows: Names, _____ Number of votes received, _____. _____, Missouri, _____, 19—.

Inspectors.

On motion the report of the inspectors was ordered spread upon the record, and the names receiving the highest number of votes, to wit; _____, were declared directors for the ensuing year, and the secretary ordered to notify them of their election. On motion board adjourned.

Attest:

_____, Secretary.

_____, President.

ORGANIZATION OF NEW BOARD.

[Form No. 10.]

The members of the board-elect of the _____ of _____ met at the banking house in _____, Mo., for the purpose of organization and the selection of officers for the ensuing year. Present (here insert names of all present). On motion of _____, _____ was elected chairman and _____ was elected secretary. By order of the chairman, the minutes of the retiring board were read, and it was found that each member of the new board had filed his qualifying oath of office as required by law, and that the same had been entered of record. The organization was then perfected by the election of the following permanent officers, viz.: _____, president; _____, vice-president; _____, secretary; _____, cashier; _____, assistant cashier.

The organization being now completed, on motion of _____, salaries of the several officers and their respective bonds were fixed for the ensuing year, as follows:

President, salary, \$_____; bond, \$_____. Cashier, salary, \$_____; bond, \$_____. Assistant Cashier, salary, \$_____; bond, \$_____.

_____ presents his bond as president in the penal sum of \$_____, as required, with _____, _____, and _____, as sureties.

_____ presents his bond as cashier in the penal sum of \$_____, as required, with _____, _____, and _____, as sureties.

And _____ presents his bond as assistant cashier in the penal sum of \$_____, as required, with _____, _____, and _____ as sureties. All of said bonds being in due form and the sureties deemed sufficient, are by the board approved and ordered into the custody of _____ for safe keeping.

There being no further business, the board adjourned until _____ (the time fixed by the by-laws for the regular monthly meeting).

Attest:

_____, Secretary.

_____, President.

REGULAR MONTHLY MEETING OF BOARD.

[Form No. 11.]

The board of directors of the _____ bank of _____ met at _____ o'clock this day at its banking house in _____, Mo., in regular meeting, with President _____ in the chair. Present (Name all present). Minutes of last meeting were read and approved. All loans and discounts made since last meeting, being the same as appear of record in discount register, from No. _____ to No. _____, were examined with their collateral and approved; also a list of loans past due thirty days and over was presented for the inspection of the board (here give any special orders of board regarding this past due paper); also a list of those who had increased their liabilities one thousand dollars or more since previous meeting; (here give special orders if any of board regarding this). Also a list of all overdrafts in excess of one hundred dollars (here give the orders of the board, if any regarding this).

The increased liabilities of one thousand and over and overdrafts in excess of one hundred dollars, are as follows: _____.

On examination the board finds that the existing indebtedness of directors and officers of this bank at this date appears as follows: _____.

_____, as payer \$_____, as endorser \$_____.

_____, as payer \$_____, as endorser \$_____.

On application of _____, (a member of the board or an officer), the cashier is hereby ordered to grant (Mr. _____) a loan in the sum of \$_____, the same being in excess of 10 per cent of the capital stock of this bank.

On motion of _____, the cashier is hereby ordered to borrow the sum of \$_____, for a period of _____ days, from the bank of _____, for the use of this bank, and he is hereby authorized to hypothecate the following securities belonging to this bank, if necessary, in obtaining the same, viz.: _____.

Attest:

_____, Secretary.

_____, President.

NOTICE OF ELECTION OF DIRECTOR.

[Form No. 12.]

Dear Sir:—You are hereby notified that on the _____ day of _____, 19—, you were duly elected to serve as a director of the _____ of _____ for the ensuing year, and you are required to file a written oath of office of such position with the president of the board of directors of this bank within thirty days from the date of your election. _____, Secretary of the Board.

PROXY STOCKHOLDERS' MEETING.

[Form No. 13.]

Know all men by these presents:

That I, the undersigned, being the owner of _____ shares of the capital stock of the _____ bank of _____, Mo., do hereby constitute and appoint _____ as my proxy to represent me at a meeting of the stockholders of said bank, to be held at its banking house on the _____ day of _____, 19—; and authorize him to act, and vote all of said stock, for me upon any proposition which may legally come before such meeting, the same as if I were present in person, and with full power of substitution and revocation, hereby ratifying and confirming all that my said proxy may lawfully do in the premises.

Witness.

Shareholder.

WAIVER OF NOTICE OF STOCKHOLDERS' MEETING.

[Form No. 14.]

I hereby waive the notice required by law of a meeting of the stockholders of the _____ bank of _____, Mo., and agree and consent that such meeting may be held at its banking house on the _____ day of _____, 191—, at _____ o'clock _____ m.

for the purpose of ———, and give my consent that such meeting may be held at the time and place and for the purpose mentioned herein.

Shareholder of ——— shares of capital stock.

OATH OF DIRECTOR.

[Form No. 15.]

State of Missouri,

County of ———.

ss.

——— to me personally known, being by me sworn, upon his oath doth depose and say:

I will so far as the duties devolve upon me, diligent and honestly administer the affairs of the bank (or trust company) and will not knowingly violate, or willingly permit to be violated any of the provisions of the law applicable to such bank (or trust company), and that I am the owner in good faith and in my own right of the requisite number of shares of stock required by law standing in my name on the books of the bank and that the same is not hypothecated, or in any way pledged as security for any loan or debt (and in case of re-election or appointment), that such stock was not hypothecated or in any way pledged as security for any loan or debt during my previous term.

Subscribed and sworn to before me this ——— day of ———, 19—. Witness my hand and notarial seal. My term expires ——— day of ———, 19—.

———, Notary Public.

Instructions—Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and the fact of such oath having been made and filed with the officers of the bank shall be noted on the records of the acts of the directors. A failure to comply with this provision within the thirty days shall work a forfeiture of position.

Sec. 11747.

FORM FOR DESIGNATING DEPOSITARIES.

[Form No. 16.]

We, ———, president, and ———, cashier, of ——— bank, located at ———, Missouri, hereby certify that at meeting of the board of directors held on the ——— day of ———, 19—, the following banks were, by action of the board, designated as depositaries for this bank until further notice.

Name.	Location.
.....
.....
.....
.....

Submitted for your approval as required by Section 11744, R. S., 1919.

President.

Cashier or Secretary.

Instructions—Submit in duplicate. One copy to be retained by Commissioner and one copy to be returned to bank. If a "Trust Company" certificate should be from president and secretary and the words "Trust Company" used instead of "Bank."

Action of Board of Directors in above matter approved this the ——— day of ———, 19—.

Sec. 72.

State Bank Commissioner.

FORM FOR CERTIFYING UNCLAIMED DEPOSITS.

[Form No. 17.]

State of Missouri,

County of _____.

ss.

We, _____, president, and _____ cashier, of _____ bank, located at _____ Missouri, being duly sworn on oath respectively do say that the following is a complete and accurate statement of all deposits and other evidences of indebtedness mentioned in section 11768, R. S., 1919, which have remained unclaimed by any person authorized to receive the same for five years next preceding the first day of August, 19—.

Date.	Amount.	Name.	Postoffice.
.....
.....

President,_____
Cashier.

Subscribed and sworn to before me this _____ day of _____ 19—.

My commission expires the _____ day of _____. Witness my hand and notarial seal.

(Seal)

Notary Public.

NOTE—Statement shall set forth the date of such deposit, or indebtedness, the amount and the name and last known place of residence or postoffice address, shall be published once in each week for two consecutive weeks, in a newspaper designated by the commissioner and shall be filed with this department together with copy of publication and affidavit of publisher, on or before the first day of October following. If no such deposits or indebtedness are held, state that fact over the affidavit of president and cashier. Publication in that event not necessary.

AFFIDAVIT OF CHANGE OF NAME.

[Form No. 18.]

State of Missouri,

County of _____.

ss.

_____ (president or secretary) of the _____, a corporation duly incorporated under the laws of the State of Missouri, being duly sworn, upon his oath states that at a meeting of the stockholders of said corporation, duly called and held on the _____ day of _____, 19—, the name of said corporation was, by a vote of its said stockholders cast as its by-laws direct, changed to _____, from _____.

(President or Secretary.)

Subscribed and sworn to before me this _____ day of _____ 19—. My term expires _____, 19—.

(Seal)

Notary Public.

Instructions—Must be recorded in the office of the recorder of deeds of the county in which the corporation is located, and then filed in the office of the Bank Commissioner. State's fee for certified copy will be \$1.95.

AFFIDAVIT OF CHANGE IN NUMBER OF DIRECTORS.

[Form No. 19.]

State of Missouri,

County of _____.

ss.

_____ (president or secretary) of the _____, a corporation duly incorporated under the laws of the State of Missouri, being duly sworn, upon his oath, states that at an annual meeting of the stockholders of said corporation, duly called and held on the _____ day of _____, 19—, the number of directors of said corporation was, by a vote of its stockholders, cast as its by-laws direct, changed from _____ to _____.

_____ (President or Secretary.)

Subscribed and sworn to before me, this _____ day of _____ 19—.

My term expires _____ 19—. Witness my hand and notarial seal.

(Seal)

_____ Notary Public.

Instructions—Must have a copy of publication with affidavit of publisher attached. A certified copy with approval of the Bank Commissioner will be sent which must be recorded in the office of the recorder of deeds of the county in which the corporation is located. Will not take effect until affidavit is filed in the office of the Bank Commissioner. State's fee for certified copy, \$1.95.

AFFIDAVIT OF DISSOLUTION.

[Form No. 20.]

_____, (president or secretary) of the _____, being duly sworn, upon his oath states that all creditors, general and special, other than stockholders for their stock have been paid in full, that said corporation was on the _____ day of _____, 19—, by a unanimous vote of its stockholders, duly dissolved, and is no longer in existence.

_____ (President or Secretary.)

Subscribed and sworn to before me, a notary public within and for the _____ of _____ this day of _____ 19—.

Witness my hand and notarial seal the day and date last above written. My term expires the _____ day of _____, 19—.

(Seal)

_____, Notary Public.

NOTE—This affidavit, when filed in the office of the Bank Commissioner, will relieve the company from making further annual reports to that office; but will not relieve it or its stockholders, of liabilities should any exist. State fees, \$1.00.

SUGGESTED FORM OF BY-LAWS.

[Form No. 21.]

BY-LAWS

of the

Section 1. The regular annual meeting of the stockholders of this bank for the election of its directors, and for the transaction of such other business as may be deemed necessary, shall be held at its banking house on _____ of each year between the hours of nine (9) a. m. and _____ p. m., of said day.

Ten (10) days' notice of the time, place and object of such meeting shall be given by the president and secretary of this bank, by publication in a daily or weekly newspaper published in _____, (place or county where bank is located), or in writing served personally on each shareholder.

Previous to the time of holding such election, the president shall appoint no less than two shareholders, who are not directors, as inspectors, who shall qualify as required by Sec. —, R. S. —, to receive and canvass the votes given at such meeting and certify the result to him.

If the president and secretary fail or refuse to give the above notice, or to call a special meeting of the stockholders on a vote of a majority of the directors, or on

the written request of a majority of the shareholders, setting forth the object of such meeting, then any two stockholders may call such meeting and appoint inspectors in the manner herein above provided.

Sec. 2. The president, upon receiving returns of the inspectors of the election aforesaid, shall cause the same to be recorded in the minute book of the bank, and shall lay before the directors at a meeting to be held within two weeks thereafter the returns so certified, and thereupon such proceedings shall be had as the subject matter decided by the election, or the vote, may require; and if for directors, the persons who receive a majority of the votes cast shall be notified thereof, and of the time at which they are required to meet at the banking house for the purpose of qualifying and organizing the new board.

If at the time fixed for the meeting of the directors-elect there should not be a quorum in attendance, the members present may adjourn from time to time until a quorum is secured.

Regular stated meetings of the board of directors of this bank shall be held on _____ of each month at its banking offices. Special meetings of the board shall be held on call of the president, or in case of his absence from the State, inability to act or sickness, on the call of the vice-president, at such time as may be named in the call; notice thereof shall be served personally on each member.

Sec. 3. The officers of this bank shall be a president, vice-president, cashier, assistant cashier and such other officers and employees as may be required for the prompt and orderly transaction of its business, to be elected or appointed by the board of directors, by whom their compensation shall be fixed and their several duties be prescribed.

Sec. 4. The president and vice-president shall hold their office for the current year for which the board of which they shall be members, was elected, unless they or either of them shall resign, become disqualified or be removed. Any vacancy occurring in the office of president or vice-president, or in the board of directors, shall be filled by the remaining members.

Sec. 5. The cashier, subordinate officers and clerks shall be appointed to hold their office respectively during the pleasure of the board of directors; and the cashier and those assuming the duties of cashier shall give good and sufficient bonds, in such sums as the directors may designate and approve.

Sec. 6. The cashier or officer in charge of this bank shall not make any loan, discount or purchase any bills, notes or other evidence of debt, amounting to more than \$_____, without the same shall have been approved by the board of directors or by a committee appointed by the board of directors for that purpose, known as the discount committee.

Sec. 7. The board of directors of this bank shall, at the first meeting of each year, appoint an examining committee, whose duty it shall be to examine the condition of the bank at least once every six months, or oftener if required; to count its cash, and compare its assets and liabilities with the accounts of the general ledger, ascertain whether the accounts are correctly kept, and that the condition of the bank corresponds therewith, and whether the bank is in a sound and solvent condition. Such committee shall report to the board, giving in detail all items included in the assets of the bank which they have reason to believe are not of the value at which they appear on the books and records of the bank, and giving the value of each of said items as in their judgment they may have determined. Said report shall be recorded in the minute book of the bank, together with the action taken thereon by the board of directors.

Sec. 8. The directors of this bank and the members of the examining committee shall each receive the sum of \$_____ for each day they are in actual attendance at the board meetings of this bank, or are performing their duties as a member of said committee, and said payments are to be charged to the general expenses of this bank.

Any compensation paid the discount committee shall be fixed by the board of directors, and charged to the general expenses of the bank.

Sec. 9. These by-laws may be changed at any annual or special meeting of the shareholders of this bank by a majority vote of the stock present, due notice of such change having been given.

FORM FOR INCORPORATING SAVINGS AND SAFE DEPOSIT INSTITUTIONS.

[Form No. 22.]

Know all men by these presents:

That we, the undersigned, desirous of forming a corporation under the laws of the State of Missouri, for the establishment of a savings and safe deposit institution, have entered into the following agreement:

First—That the name of the corporation shall be _____.

Second—That the corporation shall be located in the _____ of _____ county, Missouri.

Third—That the amount of the capital stock of the corporation shall be _____ dollars, divided into _____ shares of \$100 each; and that the entire amount thereof has been subscribed in good faith, and actually paid up in lawful money of the United States, and is in possession of the persons named as the first board of directors.

Fourth—That the names (*not less than five*) and places of residence of the several shareholders and the number of shares subscribed by each are as follows:

Name.	Residence.	Number of shares.
.....
.....
.....
.....
.....
.....

Fifth—That the board of directors shall consist of _____ shareholders, and the names of those agreed on for the first year are: _____, _____, _____, _____.

Sixth—That the corporation shall continue for a term of _____ years.

Seventh—That the purposes for which this corporation is formed are _____.

In testimony whereof, we have hereunto set our hands this _____ day of _____, 19—.

State of Missouri,

County of _____.

} ss.

On this _____ day of _____, 19—, before me personally appeared _____ (*names of all the stockholders*), to me known to be the persons described in, and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the date above mentioned. My commission expires _____, 19—.

(Seal)

_____, Notary Public.

Instructions—Must be recorded in the office of the recorder of deeds of the county in which the corporation is located, and a copy certified by the recorder filed in the office of the Bank Commissioner. State tax, \$50 on first \$50,000 or less of capital, and \$5.00 on each \$10,000 additional. Fee for certificate, \$3.00.

FORM FOR INCORPORATING MORTGAGE LOAN COMPANY.

[Form No. 23.]

Know all men by these presents:

That we, the undersigned, desirous of forming a corporation under the laws of the State of Missouri for the establishment of a mortgage loan company, have entered into the following agreement:

First—That the name of this corporation shall be the _____ (not the name already assumed by another corporation, or the imitation thereof).

Second—That the corporation shall be located in the _____, of _____ county of _____, Missouri.

Third—That the capital stock of the corporation shall be _____ (not less than \$100,000, actually subscribed, nor more than (\$10,000,000) dollars, divided into _____ shares of the par value of _____ dollars; that the amount of capital stock actually subscribed is _____ (which shall be at least one-fourth of the capital stock authorized) dollars; that _____ (not less than one-half) of the capital stock so subscribed has been actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors.

Fourth—That the names (not less than five) and places of residence of the several shareholders, and the number of shares subscribed by each are as follows:

Name.	Residence.	Number of shares.
.....
.....
.....
.....
.....

Fifth—That the board of directors shall consist of _____ (not less than five nor more than twenty-five, a majority of whom shall be bona fide citizens of the State) stockholders, and the following named have been agreed upon for the year: _____, _____, _____, _____, _____.

Sixth—That the corporation shall continue for _____ (not exceeding 50) years.

Seventh—That the purposes for which this corporation is formed are _____.

In testimony whereof, we have hereunto set our hands this _____ day of _____, 19—.

State of Missouri,

County of _____.

} ss.

On this _____ day of _____, 19—, before me personally appeared _____ (names of all subscribers to the stock), to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year above written. My commission expires _____, 19—.

_____, Notary Public.

Instructions—Must be recorded in the office of the recorder of deeds of the county in which the corporation is located, and a certified copy thereof filed in the office of the Bank Commissioner. State tax on a capital of \$100,000 will be \$75, and fee for certificate \$3.00; \$5.00 tax on each additional \$10,000 of capital.

FORM OF BOND FOR INCORPORATED BANK.

[Form No. 24.]

Know all men by these presents:

That we, _____ as principal, and _____ as sureties, do hereby acknowledge ourselves indebted to and owe _____ of _____ in _____ County, Missouri, the full sum of _____ (\$_____) dollars, for the payment of which, well and truly to be made, we, and each of us, do hereby bind ourselves, our heirs, executors and administrators, and every of them, jointly and severally, firmly by these presents.

The above obligation is conditioned as follows, viz.: Whereas, the above named principal was on the _____ day of _____ 19____, duly chosen to the office or position of _____ of and in said _____, a Missouri corporation, for a term of _____ beginning at the opening of business on the _____ day of _____ 19____, and ending at the close of business on the _____ day of _____ 19____;

Now, therefore, if the above named principal, the said _____, shall well, truly and faithfully do and perform all of the duties of and pertaining to his said office and position of trust for and during his said term, as is in such cases made and provided by law, and at the expiration of his term, if he shall turn over to his successor all moneys, notes, property, books, papers, and letters coming to his possession during his said term, and faithfully account for all assets and property of said bank according to law, then this obligation shall be void; but otherwise, then this obligation shall remain and be in full force and effect.

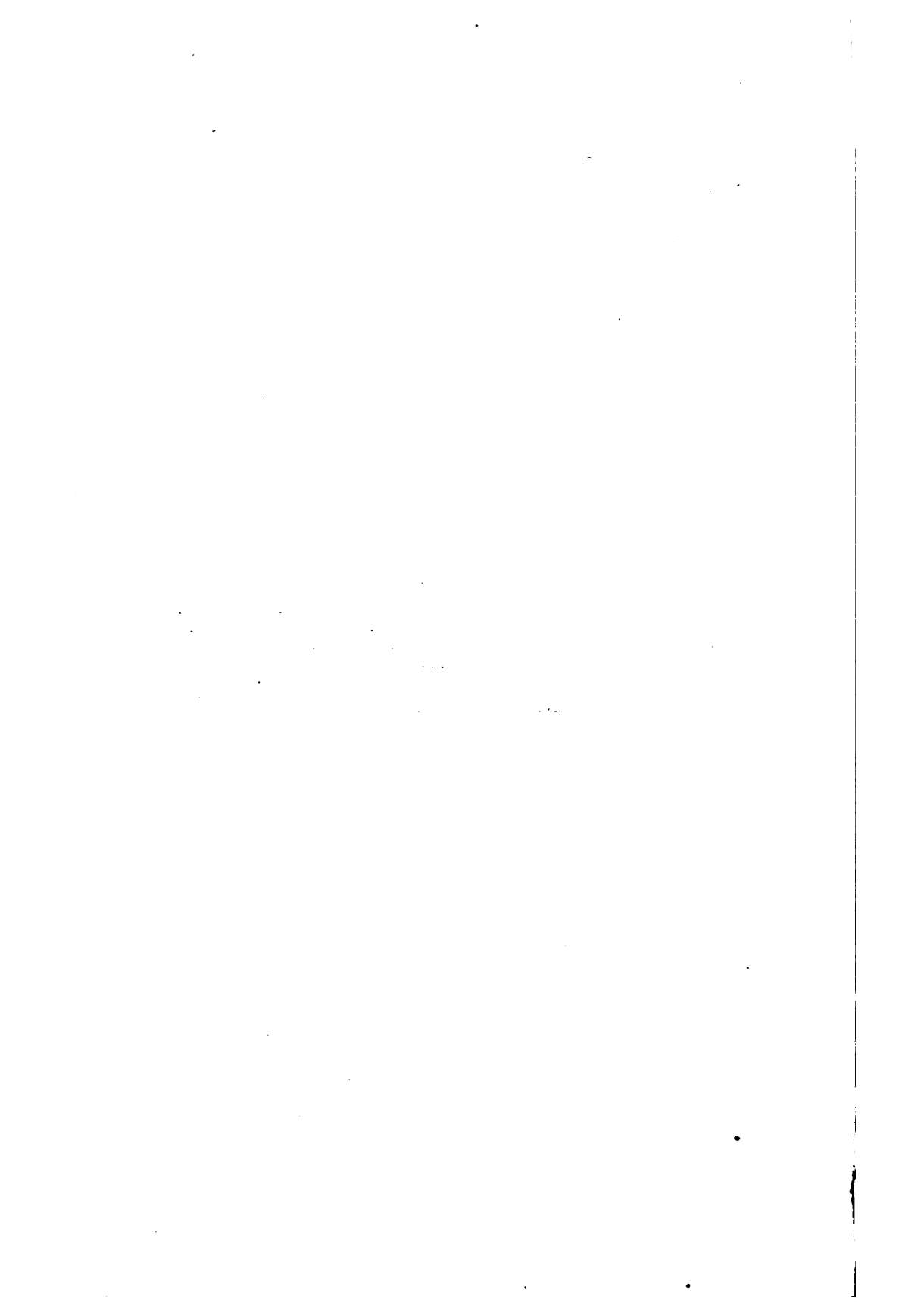
Witness our hands, this _____ day of _____ 191____.

Filed with the board of directors of _____ on the _____ day of _____ 19____, and by them approved on the _____ day of _____, 19____.

_____, President.

Attest:

_____, Secretary.



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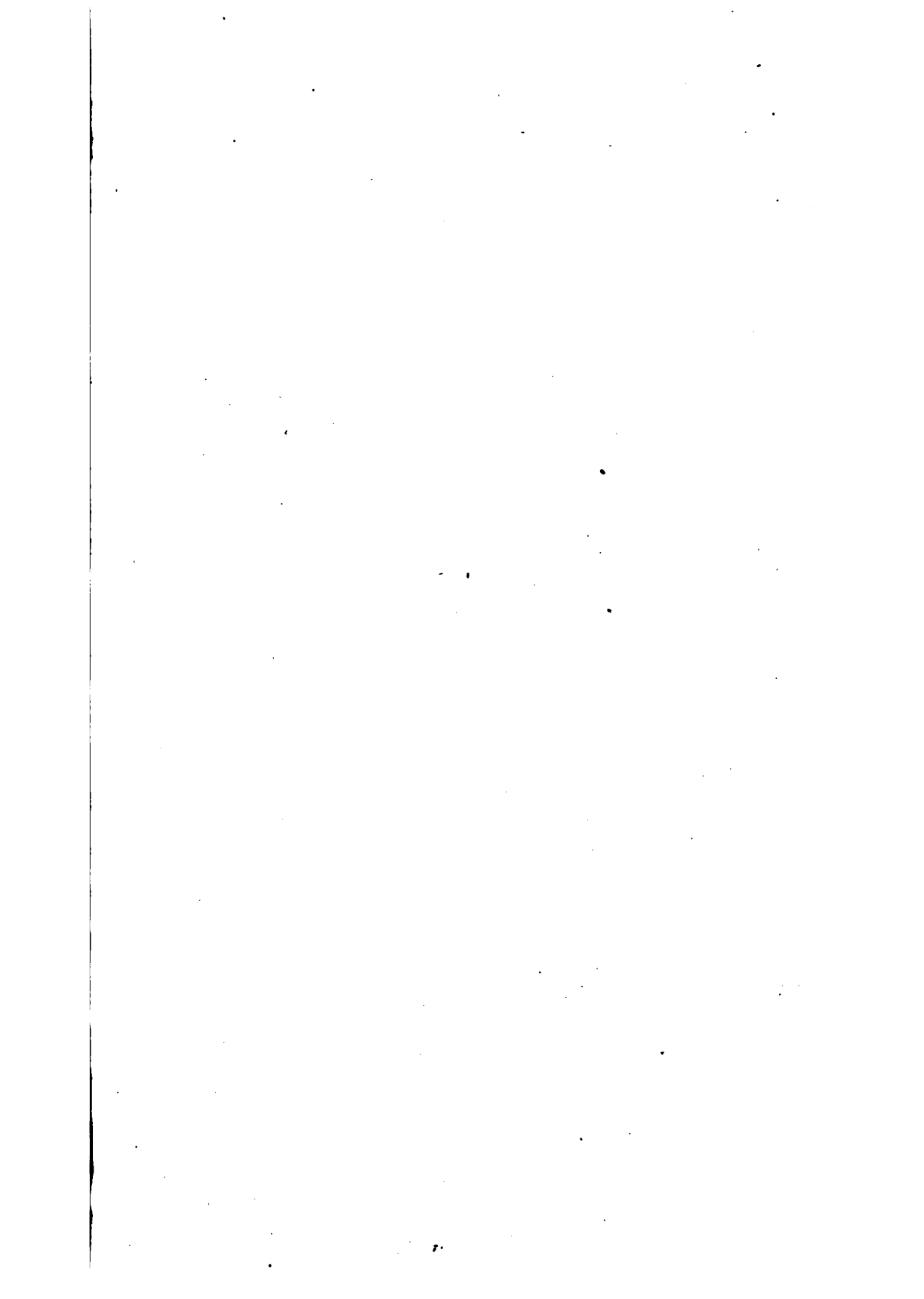
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